UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

August 9, 2019
Date of report (date of earliest event reported)

JAKKS PACIFIC, INC.
(Exact name of registrant as specified in its charter)

Delaware	**0-28104**	**95-4527222**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

2951 28th Street, Santa Monica, California (Address of principal executive offices) **90405** (Zip Code)

(424) 268-9444
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $.001 par value	**JAKK**	**NASDAQ Global Select Market**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

Transaction Agreement

On August 7, 2019 (the "Transaction Agreement Date"), JAKKS Pacific, Inc., a Delaware corporation (the "Company"), certain of the Company's affiliates and subsidiaries (collectively with the Company, the "Company Parties"), certain holders of the Company's 4.875% Convertible Senior Notes due 2020 (the "2020 Notes" and, such holders, the "Investor Parties"), and Oasis Investments II Master Fund Ltd. ("Oasis") in its capacity as holder of $7,250,000 principal amount of 2020 Notes and of the Company's 3.25% Convertible Senior Notes (the "Oasis Notes"), entered into a Transaction Agreement (the "Transaction Agreement"), pursuant to which, on August 9, 2019 (the "Closing Date"), the parties thereto consummated certain transactions relating to the restructuring, refinancing and recapitalization of the Company (the "Recapitalization").

The Recapitalization includes, among other things: (i) an investment by the Investor Parties of $30,000,000 in cash and the cancellation of $103,845,000 aggregate principal amount of 2020 Notes held by the Investor Parties for the New Common Equity, the New Preferred Equity and the New Term Loan (each, as defined below); (ii) the amendment and restatement of the existing $29,550,000 aggregate principal amount of Oasis Notes, and the cancellation of $7,250,000 aggregate principal amount of 2020 Notes held by Oasis, in each case, for the New Oasis Notes (as defined below); (iii) the amendment and restatement of the Company's existing asset-based revolving credit agreement with Wells Fargo Bank, National Association ("Wells Fargo"), including to extend the maturity thereof; (iv) the repayment in full of the Company's existing term loan with GACP Finance Co., LLC; (v) the adoption by the board of directors of the Company (the "Board") and the filing with the Secretary of State of the State of Delaware of the Certificate of Designations (as defined below) for the New Preferred Equity; (vi) the adoption by the Board of (A) the Second Amended and Restated By-laws (as defined below) and (B) the Amended and Restated Nominating and Corporate Governance Committee Charter (as defined below); (vii) the reconstitution of the Board, including the grant of certain board representation rights to the Investor Parties on the terms set forth in the Certificate of Designations and the Second Amended and Restated By-laws, as described below; and (viii) the entry into the Voting Agreements (as defined below) by the Company and the other parties thereto.

Amended and Restated ABL Credit Facility

In connection with the Recapitalization, the Company and certain of its subsidiaries, as borrowers, entered into an Amended and Restated Credit Agreement, dated as of the Closing Date (the "Amended ABL Credit Agreement"), with Wells Fargo, as agent. The Amended ABL Credit Agreement amends and restates the Company's existing asset-based revolving credit agreement, dated as of March 27, 2014 (the "Existing ABL Facility"), with General Electric Capital Corporation, since assigned to Wells Fargo, as lender for a $60,000,000 senior secured revolving credit facility (the "Amended ABL Facility") of which $5,000,000 was immediately borrowed and outstanding as of the Closing Date. Any amounts borrowed under the Amended ABL Facility accrue interest, at either (i) LIBOR plus 1.50%-2.00% (determined by reference to a fixed charge coverage ratio-based pricing grid) or (ii) base rate plus 0.50%-1.00% (determined by reference to a fixed charge coverage ratio-based pricing grid). The Amended ABL Facility matures on August 9, 2022.

The Amended ABL Credit Agreement contains negative covenants that, subject to certain exceptions, limit the ability of the Company and its subsidiaries to, among other things, incur additional indebtedness, make restricted payments, pledge their assets as security, make investments, loans, advances, guarantees and acquisitions, undergo fundamental changes and enter into transactions with affiliates. The Company is also required to maintain a fixed charge coverage ratio of not less than 1.1 to 1.0 and a minimum liquidity of $25,000,000 and a minimum availability of at least $9,000,000, in each case as described in more detail in the Amended ABL Credit Agreement.

The Amended ABL Credit Agreement contains events of default that are customary for a facility of this nature, including (subject in certain cases to grace periods and thresholds) nonpayment of principal, nonpayment of interest, fees or other amounts, material inaccuracy of representations and warranties, violation of covenants, cross-default to other material indebtedness, bankruptcy or insolvency events, material judgment defaults and a change of control as specified in the Amended ABL Credit Agreement. If an event of default occurs, the commitments of the lenders to lend under the Amended ABL Credit Agreement may be terminated and the maturity of the amounts owed may be accelerated.

The obligations under the Amended ABL Credit Agreement are guaranteed by the Company, the subsidiary borrowers thereunder and certain of the other existing and future direct and indirect subsidiaries of the Company and are secured by substantially all of the assets of the Company, the subsidiary borrowers thereunder and such other subsidiary guarantors, in each case, subject to certain exceptions and permitted liens.

New Term Loan

In connection with the Recapitalization, the Company and certain of its subsidiaries, as borrowers, entered into a First Lien Term Loan Facility Credit Agreement, dated as of the Closing Date (the "New Term Loan Agreement"), with the Investor Parties, as lenders, and Cortland Capital Market Services LLC, as agent, for a $134,801,239.38 first-lien secured term loan (the "New Term Loan").

Amounts outstanding under the New Term Loan accrue interest at 10.50% per annum, payable semi-annually (with 8% per annum payable in cash and 2.5% per annum payable in "kind"). The New Term Loan matures on February 9, 2023.

The New Term Loan Agreement contains negative covenants that, subject to certain exceptions, limit the ability of the Company and its subsidiaries to, among other things, incur additional indebtedness, make restricted payments, pledge their assets as security, make investments, loans, advances, guarantees and acquisitions, undergo fundamental changes and enter into transactions with affiliates. Commencing with the fiscal quarter ending September 30, 2020, the Company is also required to maintain a minimum EBITDA of not less than $34,000,000 and a minimum liquidity of not less than $10,000,000, in each case as described in more detail in the New Term Loan Agreement.

The New Term Loan Agreement contains events of default that are customary for a facility of this nature, including (subject in certain cases to grace periods and thresholds) nonpayment of principal, nonpayment of interest, fees or other amounts, material inaccuracy of representations and warranties, violation of covenants, cross-default to other material indebtedness, bankruptcy or insolvency events, material judgment defaults and a change of control as specified in the New Term Loan Agreement. If an event of default occurs, the maturity of the amounts owed under the New Term Loan Agreement may be accelerated.

The obligations under the New Term Loan Agreement are guaranteed by the Company, the subsidiary borrowers thereunder and certain of the other existing and future direct and indirect subsidiaries of the Company and are secured by substantially all of the assets of the Company, the subsidiary borrowers thereunder and such other subsidiary guarantors, in each case, subject to certain exceptions and permitted liens.

The lenders under the New Term Loan are the Investor Parties, which prior to the Closing Date held 2020 Notes and on and after the Closing Date hold the New Common Equity and the New Preferred Equity and have the other rights described in this Form 8-K, including under Items 5.02 and 5.03 below.

New Oasis Notes

In connection with the Recapitalization, on the Closing Date, the Company issued (i) amended and restated notes with respect to the $21,550,000 Oasis Note issued on November 7, 2017, and the $8,000,000 Oasis Note issued on July 26, 2018 (together, the "Existing Oasis Notes"), and (ii) a new $8,000,000 Convertible Senior Note having the same terms as such amended and restated notes (collectively, the "New Oasis Notes"). Interest on the New Oasis Notes is payable on each May 1 and November 1 until maturity and accrues at an annual rate of (i) 3.25% if paid in cash or 5.00% if paid in stock plus (ii) 2.75% payable in kind. The New Oasis Notes mature 91 days after the amounts outstanding under the New Term Loan are paid in full, and in no event later than July 3, 2023.

The New Oasis Notes provide, among other things, that the initial conversion price is $1.00. The conversion price will be reset on each February 9 and August 9, starting on February 9, 2020 (each, a "reset date") to a price equal to 105% of the 5-day VWAP preceding the applicable reset date. Under no circumstances shall the reset result in a conversion price below the greater of (i) the closing price on the trading day immediately preceding the applicable reset date and (ii) 30% of the stock price as of the Transaction Agreement Date and will not be greater than the conversion price in effect immediately before such reset. The Company may trigger a mandatory conversion of the New Oasis Notes if the market price exceeds 150% of the conversion price on the Closing Date for 20 consecutive days and certain equity conditions are satisfied. The Company may redeem the New Oasis Notes in cash if a person, entity or group acquires shares of the Company's Common Stock, par value $0.001 per share (the "Common Stock"), and as a result owns at least 49% of the Company's issued and outstanding Common Stock. Oasis may require repayment of the New Oasis Notes upon the occurrence of certain "Fundamental Changes," as such term is defined in the New Oasis Notes.

Upon the occurrence of an event of default, the full amount of principal, accrued interest, and other amounts outstanding under the New Oasis Notes may become immediately due and payable. Events of default include, but are not limited to: (i) a default in the payment of principal when such principal payment is due and payable pursuant to the New Oasis Notes; (ii) a default in the payment of interest when such interest payment is due and payable pursuant to the New Oasis Notes, which default continues for 30 days; (iii) failure to convert the New Oasis Notes upon exercise of the holder's conversion right, which failure continues for 30 days; (iv) failure by the Company to provide a repurchase notice upon the occurrence of a Fundamental Change within the time required to provide such notice, which failure continues for five days; (v) default in the performance, or breach, of any covenant or agreement by the Company in the New Oasis Notes and which default continues for a period of 60 consecutive days; (vi) default by the Company or a significant subsidiary under any other indebtedness resulting in the acceleration of the maturity of at least $25,000,000 of such indebtedness prior to its express maturity, which default continues for a period of 60 consecutive days; (vii) a final judgment entered against the Company or a significant subsidiary for the payment in an aggregate amount in excess of $25,000,000 by a court or courts of competent jurisdiction, which judgment remains undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 days; and (viii) the Company or a significant subsidiary voluntarily commences a bankruptcy case, consents to the entry of an order for relief against it (or such order is otherwise entered) in an involuntary bankruptcy case, consents to the appointment of (or an order for such appointment is otherwise entered) a custodian of it or substantially all of its property, makes a general assignment for the benefit of its creditors, or is ordered to be liquidated by a court and such order remains unstayed and in effect for 60 consecutive days.

In the event approval of the Company's stockholders is required to issue shares to Oasis pursuant to the rules and regulations of Nasdaq, the terms of the New Oasis Notes provide that, until such stockholder approval is obtained (which approval the Company is obligated to seek on the terms set forth in the Transaction Agreement), limitations in the New Oasis Notes will prevent the Company from issuing to Oasis more than 19.9% of the Common Stock issued and outstanding prior to the Transaction Agreement Date. Oasis may not submit for conversion any part of the New Oasis Notes if the number of shares of the Common Stock issuable upon such conversion of the New Oasis Notes which, when added to all other shares of the Common Stock deemed to be beneficially owned by Oasis and its affiliates, would result in Oasis and its affiliates beneficially owning more than 4.99% of the issued and outstanding Common Stock. The Company has the discretion to settle the conversion of the New Oasis Notes and to pay accrued interest thereon in stock, in cash and/or in a combination thereof, provided that any payment of interest in stock is contingent upon the satisfaction of certain equity conditions.

In connection with issuing the New Oasis Notes, the Company and Oasis entered into an Amended and Restated Registration Rights Agreement, dated as of the Closing Date (the "Amended and Restated Oasis Registration Rights Agreement"), which amends and restates the Company's existing Registration Rights Agreement, dated as of November 7, 2017 and the Company's existing Registration Rights Agreement, dated as of July 25, 2018 (collectively, the "Existing Oasis Registration Rights Agreement"), with Oasis to reflect the New Oasis Notes and to accommodate the pari passu and pro rata registration rights of the Investor Parties with respect to their New Common Equity. Pursuant to the Amended and Restated Oasis Registration Rights Agreement, the Company has agreed to provide Oasis with customary registration rights with respect to any potential shares of Common Stock the Company determines to issue pursuant to the terms of the New Oasis Notes.

Alexander Shoghi, one of the Company's directors, is a portfolio manager at a fund related to Oasis.

Voting Agreements

In connection with the Recapitalization, on the Closing Date, the Company entered into voting agreements with each of (i) Hong Kong Meisheng Cultural Company Limited, (ii) certain of the Investor Parties, (iii) Oasis, (iv) certain current and former directors and officers of the Company beneficially owning shares of the Common Stock and (v) certain additional stockholders (each, a "Voting Agreement" and collectively, the "Voting Agreements"). The Common Stock beneficially owned by the stockholders subject to the Voting Agreements constituted approximately 53% of the total issued and outstanding Common Stock entitled to vote as of the Closing Date (after giving effect to the issuance of the New Common Equity to the Investor Parties).

Pursuant to the terms of the Voting Agreements, each stockholder party to a Voting Agreement has agreed to, among other things, vote such stockholder's shares of Common Stock as follows: (i) in favor of a proposal to amend the Company's Certificate of Incorporation (the "Certificate of Incorporation") to classify the Board into three classes, designated Class I, Class II and Class III, with staggered three-year terms, with Class I comprised of two Common Directors (as defined in the Second Amended and Restated By-laws) (with their terms expiring at the annual meeting of stockholders to be held in 2021), Class II comprised of three Common Directors, two of whom shall be the New Independent Common Directors (as defined in the Second Amended and Restated By-laws) (with their terms expiring at the annual meeting of stockholders to be held in 2022), and Class III comprised of two Series A Preferred Directors (as defined in the Second Amended and Restated By-laws) (with their terms expiring at the annual meeting of stockholders to be held in 2023), such classification to be effective as of the date of the annual meeting of stockholders to be held in 2020, or if later, the date of the stockholders' meeting at which the Classified Board Proposal is approved (the "Classified Board Proposal"); (ii) to cause the election to the Board of any New Independent Common Director nominee selected by the Nominating and Corporate Governance Committee of the Board (the "Nominating Committee") in accordance with the Amended and Restated Nominating and Corporate Governance Committee Charter; and (iii) in favor of any proposed Liquidity Event (as defined in the Certificate of Designations) approved by the Board if such Liquidity Event would result in the payment of the Liquidation Preference (as defined in the Certificate of Designations) to the holders of Series A Senior Preferred Stock. In addition, certain of the Voting Agreements contain restrictions on such stockholders' ability to enter into voting agreements, trusts and proxies and, with certain exceptions, require transferees of such stockholders' shares of Common Stock to enter into a substantially identical voting agreement with the Company. Subject to exceptions that would permit earlier termination of the Voting Agreements with (i) the Company's directors who are resigning in connection with the Recapitalization and (ii) certain of the Company's officers, in each case, under certain circumstances relating to the Company having obtained stockholder approval of the proposals described above, such stockholders' termination of employment, or an outside date, as applicable, each of the Voting Agreements will terminate on the date upon which no shares of Series A Senior Preferred Stock remain outstanding.

The foregoing descriptions of the Recapitalization, the Transaction Agreement, the Amended Revolving Credit Agreement, the New Term Loan Agreement, the New Oasis Notes, and the Amended and Restated Oasis Registration Rights Agreement are qualified in their respective entireties by reference to the respective agreements attached as exhibits to this Form 8-K and incorporated by reference in this Item 1.01.

Item 1.02. Termination of a Material Definitive Agreement.

On the Closing Date, the Company repaid in full and terminated the Term Loan Agreement, dated as of June 14, 2018, with Great American Capital Partners Finance Co., LLC. In addition, the information set forth under Item 1.01 of this Form 8-K with respect to the Amended ABL Credit Facility (which replaced the Existing ABL Facility), the New Oasis Notes (which replaced the Existing Oasis Notes) and the Amended and Restated Oasis Registration Rights Agreement (which replaced the Existing Oasis Registration Rights Agreements) is incorporated by reference into this Item 1.02.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 of this Form 8-K with respect to the Amended ABL Credit Facility, the New Term Loan and the New Oasis Notes is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this report is incorporated by reference into this Item 3.02.

On the Closing Date, the Company issued New Oasis Notes in the aggregate principal amount of $29,550,000 in exchange for the Existing Oasis Notes, and a New Oasis Note in the principal amount of $8,000,000 in exchange for the $7,250,000 aggregate principal amount of 2020 Notes. The issuance of the New Oasis Notes was exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 3(a)(9) of the Securities Act.

On the Closing Date, the Company issued to the Investor Parties, in the aggregate, 5,853,002 shares of Common Stock equal to 19.9% of the pre-Closing Date outstanding shares of Common Stock (determined prior to the consummation of the transactions contemplated by the Transaction Agreement and excluding 3,112,840 treasury shares) (the "New Common Equity") and 200,000 shares of Series A Senior Preferred Stock, par value $0.001 per share of the Company (the "New Preferred Equity" and, such preferred stock, the "Series A Senior Preferred Stock"), and entered into the New Term Loan with the Investor Parties, all in exchange for the New Money Investment and the cancellation by the Investor Parties of the $103,845,000 aggregate principal amount of 2020 Notes beneficially owned by the Investor Parties. The issuance of the New Common Equity and the New Preferred Equity was exempt from registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act.

Item 3.03. Material Modification to Rights of Security Holders.

On the Closing Date, the Company issued the New Preferred Equity to the Investor Parties. The terms of the Series A Senior Preferred Stock are set forth in a Certificate of Designations which is described under Item 5.03 of this Form 8-K and incorporated by reference into this Item 3.03. In addition, the information set forth in Items 5.02 and 5.03 of this Form 8-K with respect to certain governance rights of the Series A Senior Preferred Stock is incorporated by reference into this Item 3.03. The Series A Senior Preferred Stock ranks senior to the Common Stock with respect to the payment of dividends and distributions and in the liquidation, dissolution or winding up, and upon any distribution of the assets of, the Corporation.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Departure of Directors

In connection with the Recapitalization, the Company has reconstituted the Board. On the Closing Date, the Company received resignations from each of Michael Sitrick, Murray Skala, Rex Poulsen and Michael Gross from their respective positions as members of the Board and any committees of the Board on which they serve, effective as of the consummation of the Recapitalization (the "Resignations", and such directors, the "Resigning Directors"). The Company accepted the resignations of Messrs. Sitrick, Skala, and Gross on the Closing Date, and will accept the resignation of Mr. Poulsen following the distribution of the information and the expiration of the notice period required under Section 14(f) of the Securities Exchange Act of 1934 and Rule 14f-1 promulgated thereunder. Each of their respective decisions to resign was not the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

Election of Directors

Effective as of the Closing Date, the Board appointed the following four individuals to fill the vacancies on the Board resulting from the Resignations (collectively, the "New Directors"): (i) Andrew Axelrod and Matthew Winkler, who will serve as Series A Preferred Directors; and (ii) Carole Levine and Joshua Cascade, who will serve as New Independent Common Directors (as defined in the Second Amended and Restated By-laws). Ms. Levine's appointment as a New Director shall take effect immediately following the distribution of the information and the expiration of the notice period required under Section 14(f) of the Securities Exchange Act of 1934 and Rule 14f-1 promulgated thereunder. Each of the New Directors was determined to be "independent," as defined under the rules of Nasdaq. The New Directors will serve in accordance with the Second Amended and Restated By-laws until their respective successors are elected and qualified or until their earlier death, disability, retirement, resignation or removal.

Following the consummation of the Recapitalization, each of Stephen Berman, the Company's Chief Executive Officer, Alexander Shoghi and Zhao Xiaoqiang will continue to serve as directors. The Company has determined that Mr. Zhao (a member of the Nominating Committee) is in fact not "independent" as previously reported. Mr. Zhao has resigned from the Nominating Committee. Effective as of the Closing Date, the Board also reconstituted each of the Board's committees to fill the vacancies thereon resulting from the Resignations and Mr. Zhao's resignation from the Nominating Committee. Messrs. Axelrod, Winkler and Cascade were appointed as members of the Nominating Committee, with Mr. Winkler serving as chair. Messrs. Shoghi and Winkler and Ms. Levine were appointed as members of the Audit Committee of the Board, with Ms. Levine serving as chair. Messrs. Axelrod, Winkler and Shoghi were appointed as members of the Compensation Committee of the Board, with Mr. Axelrod serving as chair. The Capital Allocation Committee has been dissolved.

Mr. Axelrod is an officer of Axar Capital Management, one of the Investor Parties, and was selected by the Investor Parties to serve as one of the new Series A Preferred Directors. Other than the transactions entered into in connection with the Recapitalization as described in this Form 8-K, there are no transactions in which Mr. Axelrod has an interest requiring disclosure under Item 404(a) of Regulation S-K of the Securities Act.

Mr. Winkler is an officer of Benefit Street Partners, one of the Investor Parties, and was selected by the Investor Parties to serve as one of the new Series A Preferred Directors. Other than the transactions entered into in connection with the Recapitalization as described in this Form 8-K, there are no transactions in which Mr. Winkler has an interest requiring disclosure under Item 404(a) of Regulation S-K of the Securities Act.

There are no arrangements or understandings between Ms. Levine and any other person pursuant to which she was elected as a director. There are no transactions in which Ms. Levine has an interest requiring disclosure under Item 404(a) of Regulation S-K of the Securities Act.

There are no arrangements or understandings between Mr. Cascade and any other person pursuant to which he was elected as a director. There are no transactions in which Mr. Cascade has an interest requiring disclosure under Item 404(a) of Regulation S-K of the Securities Act.

The Board has not yet determined the New Directors' compensation arrangements.

Amendment No. 3 to Berman Employment Agreement

On August 9, 2019, the Company amended the employment agreement between the Company and Mr. Stephen G. Berman, Chief Executive Officer and President, and entered into Amendment No. 3 to Mr. Berman's Second Amended and Restated Employment Agreement, dated as of November 11, 2010 (the "Employment Agreement"). The terms of Mr. Berman's Employment Agreement have been amended as follows: (i) increase of Mr. Berman's Base Salary to $1,700,000.00, effective immediately; (ii) addition of a 2020 performance bonus opportunity in a range between twenty-five percent (25%) and three hundred percent (300%) of Base Salary, based upon the level of EBITDA achieved by the Company for the fiscal year, as determined by the Compensation Committee, and subject to additional terms and conditions as set forth therein; (iii) addition of a special sale transaction bonus equal to $1,000,000 if the Company enters into and consummates a Sale Transaction on or before February 15, 2020, subject to additional terms and conditions as set forth therein; (iv) modification of the Annual Restricted Stock Grant provided for under section 3(b) of the Employment Agreement, effective as of January 2020, so that the number of shares of Restricted Stock granted pursuant to such Annual Restricted Stock Grant equal the lesser of (a) $3,500,000 in value (based on the closing price of a share of Common Stock on December 31, 2019), or (b) 1.5% of outstanding shares of Common Stock, which shall vest in four equal installments on each anniversary of grant; (v) waiver of certain "Change of Control", Liquidity Event, and other provisions under the Employment Agreement with respect to certain Specified Transactions; and (vi) modification of the definition of "Good Reason Event" to include a change in membership of the Board such that following such change, a majority of the directors are not Continuing Directors. All capitalized terms used but not defined in the previous sentence have the meanings ascribed thereto in the Employment Agreement, as amended by the third amendment.

The foregoing description of the third amendment to the Employment Agreement is qualified in its entirety by reference to the full text thereof, a copy of which is filed as Exhibit 10.8 to this Form 8-K and is incorporated by reference into this Item 5.02.

Special Committee Compensation

On August 6, 2019, the Board approved certain compensation in consideration of a member of the Board serving on the Special Committee of the Board (the "Special Committee"). Each member of the Special Committee, in addition to his compensation as a member of the Board, shall receive additional compensation as follows: (i) the Chairman of the Special Committee shall be entitled to receive from the Company a one-time fee of $15,000 and each member of the Special Committee, including the Chairman, shall be entitled to receive from the Company a one-time fee of $10,000, and (ii) each member of the Special Committee shall be entitled to reimbursement of all reasonable expenses incurred in the course of performing his duties. On August 6, 2019, the Compensation Committee waived the voting rights restrictions in certain restricted stock awards under the 2002 Stock Award and Incentive Plan for certain unvested shares previously granted to Stephen G. Berman and John McGrath. On August 6, 2019, the Board resolved to award the Resigning Directors $18,750 payable promptly upon closing of the Recapitalization, representing the third quarterly installment of annual cash compensation due to the Resigning Directors, and to accelerate and immediately vest upon closing of the Recapitalization 41,029 shares of the annual stock compensation granted to each of the Resigning Directors on January 1, 2019. Each Resigning Director shall forfeit the balance of his annual stock compensation granted to such Resigning Director on January 1, 2019.

Item 5.03. Amendments to Articles of Incorporation or By-laws; Change in Fiscal Year.

Certificate of Designations

On the Closing Date, the Company filed the Certificate of Designations of the Series A Senior Preferred Stock (the "Certificate of Designations") with the Secretary of State of the State of Delaware. The Certificate of Designations fixes the powers, preferences, rights, qualifications, limitations and restrictions of the Series A Senior Preferred Stock.

The Series A Senior Preferred Stock has the right to receive dividends on a quarterly basis equal to 6.0% per annum, payable in cash or, if not paid in cash, by an automatic accretion of the Series A Preferred Stock. The Series A Senior Preferred Stock has no stated maturity, however, the Company has the right to redeem all or a portion of the Series A Senior Preferred Stock at its Liquidation Preference (as defined below) at any time after payment in full of the New Term Loan. In addition, upon the occurrence of certain change of control type events, holders of the Series A Senior Preferred Stock are entitled to receive an amount (the "Liquidation Preference"), in preference to holders of Common Stock or other junior stock, equal to (i) 20% of the accreted amount in the case of a certain specified transaction, or (ii) otherwise, 150% of the accreted amount, in either case plus any accrued and unpaid dividends.

The Series A Senior Preferred Stock does not have any voting rights, except to the extent required by the Delaware General Corporation Law, except for the exclusive right to elect the Series A Preferred Directors and except for certain approval rights over certain transactions. These approval rights require the prior consent of specified percentages of holders (or in certain cases, all holders) of the Series A Senior Preferred Stock in order for the Company to take certain actions, including the issuance of additional shares of Series A Senior Preferred Stock or parity stock, the issuance of senior stock, certain amendments to the Certificate of Incorporation, the Certificate of Designations, the Second Amended and Restated By-laws or the Amended and Restated Nominating and Corporate Governance Committee Charter, material changes in the Company's line of business and certain change of control type transactions. In addition, the Certificate of Designations provides that the approval of at least six directors is required for any related person transaction within the meaning of Item 404 of Regulation S-K under the Act, including, without limitation, the adoption of, or any amendment, modification or waiver of, any agreement or arrangement related to any such transaction. The Certificate of Designations also includes restrictions on the ability of the Company to pay dividends on or make distributions with respect to, or redeem or repurchase, shares of Common Stock or other junior stock. In addition, holders of the Series A Preferred Stock have preemptive rights regarding future issuance of Series A Senior Preferred Stock or parity stock.

In addition, the Certificate of Designations provides the holders of Series A Senior Preferred Stock certain board representation rights. The Certificate of Designations provides, among other things, that, for so long as at least 50,000 shares of Series A Senior Preferred Stock remain outstanding, (i) the holders of a majority of the outstanding shares of Series A Senior Preferred Stock have the sole right to nominate candidates to serve as the Series A Preferred Directors and (ii) the holders of shares of Series A Senior Preferred Stock, voting as a separate class, have the right to elect two individuals to serve as the Series A Preferred Directors. From and after (i) the first annual meeting of stockholders occurring after less than 50,000 shares of Series A Senior Preferred Stock remain outstanding, the holders of Series A Senior Preferred Stock will only have the right to nominate and elect one Series A Preferred Director, and (ii) the time no shares of Series A Senior Preferred Stock remain outstanding, the holders of Series A Senior Preferred Stock will no longer have the right to nominate or elect any Series A Preferred Directors. The Series A Preferred Directors will serve for terms ending at the annual meeting of stockholders in 2023 and for successive three-year terms thereafter (until no shares of Series A Senior Preferred Stock remain outstanding), and as of such time as the Classified Board Proposal is approved, the Series A Preferred Directors shall be deemed to serve in Class III. The number of Common Directors and Series A Preferred Directors is fixed and cannot be amended without the approval of holders of a majority of the outstanding Common Stock and holders of at least 80% of the outstanding shares of Series A Senior Preferred Stock, each voting as a separate class.

The foregoing description of the Certificate of Designations and the Series A Senior Preferred Stock is qualified in its entirety by reference to the full text of the Certificate of Designations, a copy of which is filed as Exhibit 3.1 to this Form 8-K and is incorporated by reference into this Item 5.03.

Second Amended and Restated By-laws

On the Closing Date, the Board approved and adopted the Company's Second Amended and Restated By-laws (the "Second Amended and Restated By-laws"), effective immediately. The Second Amended and Restated By-laws amend and restate the Company's Amended and Restated By-laws to give effect to certain governance arrangements in connection with the Recapitalization, including the following changes: (i) to clarify that the majority voting standard for uncontested director elections applies only to the Common Directors; (ii) to set the authorized number of directors at seven, to be comprised of five Common Directors (including two New Independent Common Directors) and two Series A Preferred Directors; (iii) to describe the election process and term for the Series A Preferred Directors and to provide for reductions in the number of Series A Preferred Directors under the circumstances described under "Certificate of Designations" above; (iv) to set forth the terms of filling vacancies with respect to the New Independent Common Directors and the Series A Preferred Directors; (v) to provide for the removal of the Series A Preferred Directors under certain circumstances; (vi) to provide that the Nominating Committee must at all times consist of three directors, including two Series A Preferred Directors, subject to certain conditions, and to provide that each other committee of the Board must include at least one Series A Preferred Director; and (vii) to provide that the Board's power to amend, alter or repeal certain provisions of the Second Amended and Restated By-laws is subject to the prior approval of holders of at least eighty percent (80%) of the Series A Senior Preferred Stock and that all other amendments, alterations or repeals are subject to the prior approval of the holders of a majority of the shares of Series A Senior Preferred Stock.

The foregoing description of the Second Amended and Restated By-laws is qualified in its entirety by reference to the full text of the Second Amended and Restated By-laws, a copy of which is filed as Exhibit 3.2 to this Form 8-K and is incorporated by reference into this Item 5.03.

Item 8.01. Other Events.

In connection with the Recapitalization, on the Closing Date, the Board, with the concurrence of a majority of its independent members, approved and adopted the Amended and Restated Nominating and Corporate Governance Committee Charter, which provides, among other things, (i) for the committee composition described under "Second Amended and Restated By-laws" above, (ii) that the Nominating Committee has exclusive authority, on behalf of the Company and on the terms set forth therein, to determine what action should be taken to enforce, and to approve any modification or waiver of, the provisions of the Voting Agreements, (iii) that the Nominating Committee has exclusive authority, on the terms set forth therein, to select nominees to stand for election as the New Independent Common Directors and persons to fill vacancies in the New Independent Common Directors, (iv) that the Nominating Committee will continue to nominate Mr. Cascade and Ms. Levine until no shares of Series A Senior Preferred Stock are outstanding or their earlier death, disability, retirement, resignation or removal and (v) that any future replacements for the New Independent Common Directors (or their successors) will be selected by the Nominating Committee from the Preapproved List (as defined in the Amended and Restated Nominating and Corporate Governance Committee Charter). The Company will post a copy of the Amended and Restated Nominating and Corporate Governance Committee Charter in the "Corporate Governance" section of the "Investors" page of the Company's website, www.jakks.com, as soon as practicable. No part of such website, or any information that can be accessed from such website, is incorporated into this 8-K.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit	Description
3.1	Certificate of Designations of Series A Senior Preferred Stock of JAKKS Pacific, Inc.
3.2	Second Amended and Restated By-laws of JAKKS Pacific, Inc., effective August 9, 2019
10.1*	Transaction Agreement, dated as of August 7, 2019, by and among JAKKS Pacific, Inc., certain of the Company's affiliates and subsidiaries, certain holders of the Company's 4.875% Convertible Senior Notes due 2020 and Oasis Investments II Master Fund Ltd.
10.2*	Amended and Restated Credit Agreement, dated as of August 9, 2019, by and among JAKKS Pacific, Inc., Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the lenders party thereto and Wells Fargo Bank, National Association, as agent
10.3*	First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, by and among JAKKS Pacific, Inc., the financial institutions party thereto, as lenders, and Cortland Capital Market Services LLC, as agent
10.4	Amended and Restated Convertible Senior Note due 2023 issued to Oasis Investments II Master Fund Ltd. in the face amount of $21,550,000
10.5	Amended and Restated Convertible Senior Note due 2023 issued to Oasis Investments II Master Fund Ltd. in the face amount of $8,000,000
10.6	Convertible Senior Note due 2023 issued to Oasis Investments II Master Fund Ltd. in the face amount of $8,000,000
10.7*	Amended and Restated Registration Rights Agreement, dated as of August 9, 2019, by and between JAKKS Pacific, Inc. and Oasis Investments II Master Fund Ltd.
10.8*	Amendment No. 3 to the Second Amended and Restated Employment Agreement, dated as of August 9, 2019, by and between Stephen G. Berman and JAKKS Pacific, Inc.

* Certain schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K under the Securities Act. The Company agrees to furnish supplementally any omitted schedules to the Securities and Exchange Commission upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

JAKKS PACIFIC, INC.

Dated: August 9, 2019

By: /s/ BRENT NOVAK
Brent Novak, CFO

Exhibit 3.1

JAKKS PACIFIC, INC.

CERTIFICATE OF DESIGNATIONS
OF
THE POWERS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS, AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS THEREOF,
OF
SERIES A SENIOR PREFERRED STOCK

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

JAKKS Pacific, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**Corporation**"), does hereby certify that the Board of Directors of the Corporation (the "**Board**"), at a meeting of the Board on August 6, 2019, duly approved and adopted the following resolution:

WHEREAS, in connection with a transaction agreement, to be entered into by and among the Corporation and the parties thereto, including the Investors, the Corporation has agreed to issue, and the Investors have agreed to acquire, 200,000 shares of a newly authorized series of Preferred Stock (as defined below), to be referred to as the Series A Preferred Stock (as defined below), having the terms set forth in this Certificate of Designations.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority vested in the Board by the Corporation's certificate of incorporation (as further amended or restated from time to time, the "**Certificate of Incorporation**"), the Board does hereby create, authorize and provide for the issuance, out of the authorized but unissued shares of the preferred stock, par value $0.001 per share, of the Corporation ("**Preferred Stock**"), of a total of 200,000 shares of a new series of Preferred Stock having the designation set forth below, and does hereby fix the number of shares constituting such series and the powers, preferences and rights, and qualifications, limitations and restrictions, of such series as follows (certain capitalized terms used in this Certificate of Designations having the meanings set forth in Section 15 below):

Section 1. Designation; Number of Shares. The shares of such series of the Preferred Stock shall be designated as the "Series A Senior Preferred Stock," par value $0.001 per share, of the Corporation (the "**Series A Preferred Stock**" and, the outstanding shares of Series A Preferred Stock at any time of determination, the "**Series A Preferred Shares**"). The number of shares constituting such series shall be Two Hundred Thousand (200,000) shares. Each Series A Preferred Share shall be identical in all respects to every other Series A Preferred Share.

Section 2. Ranking. The Series A Preferred Stock shall rank, with respect to the payment of dividends and distributions, whether upon a Liquidity Event or otherwise, and in the liquidation, dissolution or winding up, and upon any distribution of the assets of, the Corporation: (i) on a parity with any future series of Preferred Stock that by its express terms ranks on a parity with the Series A Preferred Stock with respect to payment of dividends and distributions and/or in the liquidation, dissolution or winding up, and upon any distribution of the assets, of the Corporation and is issued in accordance with Section 7(c) hereof (collectively, "**Parity Securities**") and (ii) senior to all Junior Securities of the Corporation. As described below in Section 7, and subject to any exceptions set forth therein, (i) the issuance after the Issue Date of any additional Series A Preferred Shares or any Parity Securities will be subject to prior approval by Holders of at least ninety-five percent (95%) of the then-outstanding Series A Preferred Shares and (ii) the issuance after the Issue Date of shares of any series of Preferred Stock of the Corporation that by its express terms ranks senior to the Series A Preferred Stock with respect to payment of dividends and distributions and/or in the liquidation, dissolution or winding up, or upon any distribution of the assets, of the Corporation (collectively, "**Senior Securities**") will be subject to prior approval by Holders of one hundred percent (100%) of the then-outstanding Series A Preferred Shares. The Series A Preferred Stock shall be subordinate, and rank junior in right of payment, to all indebtedness of the Corporation and to any Senior Securities issued in accordance with Section 7(d) hereof and clause (ii) of the preceding sentence.

Section 3. Maturity. The Series A Preferred Stock has no stated maturity. Series A Preferred Shares will remain outstanding indefinitely unless and until redeemed or repurchased in accordance with the terms of this Certificate of Designations.

Section 4. Dividends.

Dividends and Liquidation Accretion. Dividends ("**Dividends**") shall be payable in cash if declared by the Board, subject to the covenants contained in the Corporation's Credit Agreements. To the extent not declared and paid in cash on a Dividend Payment Date (as defined below), Dividends shall accrue on each Dividend Payment Date by an automatic increase in the Accreted Amount (as defined below) of each Series A Preferred Share (whether or not there are funds of the Corporation legally available for the payment of Dividends to the Corporation's stockholders under the DGCL) in an amount equal to the amount of Dividends accrued on such Series A Preferred Share (based on the per annum Dividend Rate) for the applicable quarterly Dividend Period (as defined below) ending on the day preceding such Dividend Payment Date, rounded to the nearest $1.00.

Dividend Rate. "**Dividend Rate**" means a rate of 6.0% per annum on the Accreted Amount. Dividends shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

Dividend Payment Date; Dividend Period.

A "**Dividend Payment Date**" shall mean each January 1, April 1, July 1 and October 1 after the Issue Date.

A "**Dividend Period**" shall mean each quarterly period commencing on a Dividend Payment Date and ending on and including the last calendar day of the calendar quarter ending on the March 31, June 30, September 30 or December 31 immediately preceding the next Dividend Payment Date; provided that the initial Dividend Period shall commence on and include the Issue Date and end on September 30, 2019.

Accreted Amount. "**Accreted Amount**" shall mean, with respect to a Series A Preferred Share, as of any time of determination, the Initial Accreted Amount of a Series A Preferred Share, as it may be automatically increased on each quarterly Dividend Payment Date pursuant to the accrual of Dividends not declared and paid in cash in accordance with the second sentence of Section 4(a) above, and as it may be reduced by any partial redemptions, repurchases or other acquisitions with respect to such Series A Preferred Share.

Restriction on Payment of Dividends and Distributions to Common Stock and Junior Securities. No dividends shall be paid or distributions made on any Common Stock or any other Junior Securities at any time when any Series A Preferred Shares continue to be outstanding; provided, however, that dividends or distributions may be paid or made on shares of Common Stock or any other Junior Securities in the form of shares of Common Stock or any other Junior Securities.

Section 5. Liquidation Preference.

Liquidation Preference. Upon the occurrence of a Liquidity Event (as defined below), the Holders will be entitled to receive (out of the assets of the Corporation legally available for distribution to the Corporation's stockholders), prior to and in preference to any distribution or payment to holders of Common Stock or any other Junior Securities, an amount (the "**Liquidation Preference**") for each Series A Preferred Share, payable in cash (or, if approved by the Board by Special Board Approval (as defined below), in securities or other property (or a combination thereof)), equal to (i) if paid concurrently with consummation of an Acceptable Transaction (as defined below), twenty percent (20%) of the Accreted Amount of such Series A Preferred Share, or (ii) if other than as set forth in the preceding clause (i), one hundred fifty percent (150%) of the Accreted Amount of such Series A Preferred Share, in each case, plus any accrued and unpaid Dividends on such Series A Preferred Share. Upon payment to Holders of the full amount of the Liquidation Preference, all outstanding Series A Preferred Shares shall be cancelled and retired and shall no longer be considered outstanding. As described under Section 7(b), the taking by the Corporation of any of the actions described in clause (i) thereof will require prior approval of Required Holders.

If, upon any Liquidity Event, the assets of the Corporation legally available for distribution to the Corporation's stockholders are insufficient to pay the Holders the full amount of such Liquidation Preference for each outstanding Series A Preferred Share (and the full amount (if any) to which the holders of any outstanding Parity Securities are entitled under the terms of such Parity Securities in connection with such Liquidity Event), the Holders (and the holders of such Parity Securities, as applicable) will share ratably in any such distribution of the assets of the Corporation in proportion to the full respective amounts (if any) to which they are entitled with respect to their Series A Preferred Shares (and Parity Securities, respectively) upon such Liquidity Event. After payment to the Holders of the full amount of such Liquidation Preference to which they are entitled for each Series A Preferred Share, the Holders as such will have no further right or claim to any of the assets of the Corporation in their capacity as Holders. No holder of Junior Securities shall receive any cash or other consideration upon a Liquidity Event by reason of such holder's ownership of such Junior Securities unless the full amount of such Liquidation Preference to which Holders are entitled in respect of all outstanding Series A Preferred Shares are entitled upon such Liquidity Event have been paid in full.

Liquidity Event. A "**Liquidity Event**" shall mean the occurrence of any of the following:

the sale, transfer, conveyance or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Corporation and its Subsidiaries (or their respective successors holding in the aggregate all or substantially all of such assets) taken as a whole, whether by means of a sale of assets, share purchase, merger, consolidation, amalgamation or other business combination (other than (x) to the Corporation or one or more wholly owned Subsidiaries of the Corporation or (y) by way of such a transaction in which clause (ii) below is not triggered);

(ii) the Corporation becomes aware of (by way of a report or any other filing pursuant to Rule 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), proxy, vote, written notice or otherwise) that any Person or "group" (as such term is used in Section 13(d)(3) of the Exchange Act) of Persons, other than a Permitted Holder (as defined below), holds or has acquired (in one transaction or a series of related transactions) beneficial ownership of at least thirty percent (30%) of the total outstanding Voting Stock (as defined below) (measured by voting power rather than number of shares) of the Corporation; provided that if the Corporation is wholly owned by one or more parent companies or intermediate companies, beneficial ownership for purposes of this clause (ii) shall be measured at the ultimate (top-tier) parent company; provided, further, that in no event shall a Liquidity Event be deemed to have occurred by virtue of the execution or the existence of the Voting Agreements (as defined in the Transaction Agreement); or

a liquidation, dissolution or winding up of the Corporation (other than a liquidation, dissolution or winding up occurring in connection with a Liquidity Event described in another clause of this definition).

Voting Stock. "**Voting Stock**" of any specified Person as of any date means capital stock of such Person that is at the time entitled to vote generally in the election of the Board of Directors of such Person and, in the case of the Corporation, shall mean the Common Stock and not the Series A Preferred Stock. Notwithstanding the preceding or any provision of the Exchange Act, (i) a Person or group of Persons shall not be deemed to beneficially own Voting Stock subject to a bona fide stock or asset purchase agreement or merger agreement (or any option agreement, warrant agreement or similar agreement (or voting or similar agreement related thereto in connection with any such purchase or merger agreement)), including as a result of any transfer restrictions on such Voting Stock or any proxy or current right granted with respect to such Voting Stock, until the consummation of the acquisition in connection with the transactions contemplated by such agreement, (ii) if any group (other than a group that is a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Corporation owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Liquidity Event has occurred and (iii) a Person or group will not be deemed to beneficially own the Voting Stock of a subject Person held by a parent entity of such subject Person unless it owns at least fifty-one percent (51%) of the total voting power of the Voting Stock of the ultimate parent entity.

Section 6. Voting Rights. In addition to having the right to elect the Series A Preferred Directors (as defined below) upon and subject to the terms set forth in Section 8, the Holders will have the right to vote, as a separate class, on the matters described in Section 7. Subject to the voting rights referred to in the immediately prior sentence, the Series A Preferred Stock will not have any voting rights except to the extent required by the DGCL. The Holders shall be entitled, in accordance with the Corporation's Bylaws, to notice of all meetings of Holders.

Section 7. Protective Provisions.

For so long as any Series A Preferred Shares remain outstanding, the prior approval (by affirmative vote or written consent) of Holders of at least eighty percent (80%) of the then-outstanding Series A Preferred Shares, voting as a separate class, shall be required for the following:

any stock dividend, stock split, stock distribution, stock combination or reverse stock split, in each case with respect to, or any increase or decrease in par value of, the Series A Preferred Stock (other than, for the avoidance of doubt, increases in the Accreted Amount as described herein);

any amendment of the Corporation's Certificate of Incorporation (including this Certificate of Designations) that directly or indirectly alters or changes the powers, preferences or special rights of the Series A Preferred Stock so as to affect the Holders adversely;

any amendment of the Corporation's Bylaws that directly or indirectly (x) changes the authorized number of directors, the number of Series A Preferred Directors or Common Directors (as defined in the Corporation's Bylaws), the rights of the Holders in respect of the nomination or election of directors or the rights of the Series A Preferred Directors, or (y) otherwise alters or changes the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely;

any amendment of the Charter of the Nominating and Corporate Governance Committee of the Board;

any waiver of any restriction contained in this Certificate of Designations on the declaration or payment of dividends or distributions on the Common Stock or any Junior Securities; and

any material change in the Corporation's line of business.

For so long as any Series A Preferred Shares remain outstanding, the prior approval (by affirmative vote or written consent) of Required Holders, voting as a separate class, shall be required for the following:

the entering into by the Corporation of a definitive agreement for, or the approval by the Board of any action that will constitute or result in, a Liquidity Event; provided, however, that the foregoing shall not apply to an Acceptable Transaction; and

other than as described in Section 7(a)(ii) and (a)(iii) above or Section 7(d) below, any amendment of the Corporation's Certificate of Incorporation (including this Certificate of Designations) or Bylaws.

For so long as any Series A Preferred Shares remain outstanding, the prior approval (by affirmative vote or written consent) of Holders of at least ninety-five percent (95%) of the then-outstanding Series A Preferred Shares, voting as a separate class, shall be required for the following:

the issuance of any additional Series A Preferred Shares (it being understood that the payment of Dividends by an increase in the Accreted Amount pursuant to the second sentence of Section 4(a) of this Certificate of Designations shall not constitute an issuance of additional Series A Preferred Shares); and

the creation of, or issuance of shares of, any future series of Parity Securities.

For so long as any Series A Preferred Shares remain outstanding, the prior approval (by affirmative vote or written consent) of Holders of one hundred percent (100%) of the then-outstanding Series A Preferred Shares, voting as a separate class, shall be required for (i) the creation of, or issuance of shares of, any future series of Senior Securities, and (ii) any amendment of this Section 7(d).

The agreements of the Corporation in Section 7(a)-7(d), insofar as they govern or purport to govern conduct concerning any Subsidiary of the Corporation, are being made by the Corporation solely in its capacity as the controlling stockholder, member, manager or partner, as the case may be, of each Subsidiary and not by it or any of the Subsidiary's members, managers, partners, officers or directors in any fiduciary capacity, and nothing herein shall require the Corporation to act in any way that would cause any stockholder, member, manager, partner, director or officer of any such Subsidiary to act in a manner that would violate legally imposed fiduciary duties applicable to any such shareholder, director or officer.

Section 8. Series A Preferred Directors.

For so long as at least fifty thousand (50,000) Series A Preferred Shares remain outstanding, (i) the Holders shall have the sole right to nominate, by action of the Required Holders, candidates to serve as the Series A Preferred Directors, and (ii) the Holders, voting as a separate class, shall have the sole right to elect, by vote or written consent of the Required Holders, two (2) individuals to serve as members of the Board (each such individual, a "**Series A Preferred Director**", and collectively, the "**Series A Preferred Directors**"), in each case at a meeting of the Holders called for such purpose (or by written consent in lieu of any such meeting). Each of the Series A Preferred Directors shall serve in accordance with the Corporation's Bylaws until their respective successors are elected and qualified or until their earlier death, disability, retirement, resignation or removal.

From and after the first annual meeting of stockholders occurring after fewer than fifty thousand (50,000) Series A Preferred Shares remain outstanding, (i) the Holders shall have the sole right to nominate, by action of the Required Holders, candidates to serve as the Series A Preferred Directors, and (ii) the Holders, voting as a separate class, shall have the sole right to elect, by vote or written consent of the Required Holders, only one (1) Series A Preferred Director (whereupon the term of office of the other Series A Preferred Director shall be deemed to have expired as of such annual meeting).

From and after the time no Series A Preferred Shares remain outstanding, the Holders will no longer have the right to nominate or elect any Series A Preferred Directors (whereupon the term of office of any Series A Preferred Director shall be deemed to expire as of such time).

As of the Issue Date, the initial Series A Preferred Directors shall be the following two (2) individuals: Andrew Axelrod and Matthew Winkler.

The Series A Preferred Directors shall serve for terms ending at the time of the Corporation's annual meeting of stockholders in 2023 and for successive three (3)-year terms thereafter (until the time no Series A Preferred Shares remain outstanding). As of such time as the Classified Board Proposal (as defined in the Transaction Agreement) is approved by stockholders of the Corporation entitled to vote thereon, the Series A Preferred Directors shall be deemed to serve in Class III.

A Series A Preferred Director may be removed at any time as a director on the Board (with or without cause) upon, and only upon, the written request of the Holders (voting as a separate class), by vote or written consent of the Required Holders. In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of a Series A Preferred Director, such vacancy shall be filled by the Board, until the next annual meeting of stockholders, with an individual selected by the Required Holders. In the event that the Required Holders shall fail to designate in writing an individual to fill the vacant Series A Preferred Director seat on the Board in accordance with the preceding sentence, then such Board seat shall remain vacant until such time as the Holders (voting as a separate class by vote or written consent of the Required Holders) elect an individual to fill such seat in accordance with this Section 8, and during any period when such seat remains vacant, the Board nonetheless shall be deemed duly constituted.

For so long as any Series A Preferred Shares remain outstanding, the number of Series A Preferred Directors shall be fixed at two (2) (or, from and after the first annual meeting of stockholders occurring after fewer than fifty thousand (50,000) Series A Preferred Shares remain outstanding, such number shall be fixed at one (1)) and cannot be amended without the approval of holders of a majority of the outstanding Common Stock and Holders of at least eighty percent (80%) of the Series A Preferred Shares, each voting as a separate class.

No provision of this Section 8 shall be amended without the prior approval of Holders of at least eighty percent (80%) of the Series A Preferred Shares.

Section 9. Redemption and Repurchases.

Optional Redemption by the Corporation.

At any time, and from time to time, after the Term Loan Credit Agreement is paid in full in cash, the Corporation may, subject to the covenants contained in the Corporation's Credit Agreements, redeem all or a portion of the Series A Preferred Shares, for cash at the Liquidation Preference plus accrued and unpaid Dividends (if any) on the Series A Preferred Shares redeemed, up to but not including the applicable redemption date (the "**Redemption Price**"). In the event that at any time fewer than all of the Series A Preferred Shares are to be redeemed by the Corporation pursuant to an optional redemption, the redemption shall be made pro rata in proportion to the number of shares held by each Holder.

The Corporation shall provide notice of any redemption pursuant to this Section 9(a), at least ten (10) days but not more than sixty (60) days prior to the redemption date, to each Holder of record of Series A Preferred Shares to be redeemed at such Holder's address appearing on the stock register of the Corporation. Each such notice shall state (i) the date fixed for such redemption, (ii) the place or places where certificates (if the shares are certificated) for the Series A Preferred Shares called for redemption are to be surrendered for payment, (iii) the Redemption Price, (iv) that unless the Corporation defaults in making the redemption payment, Dividends on the Series A Preferred Shares called for redemption shall cease to accrue on and after the redemption date, (v) that if fewer than all of the Series A Preferred Shares owned by such Holder are then to be redeemed, the number of shares or aggregate Liquidation Preference of which are to be redeemed and (vi) if such notice of redemption is subject to one or more conditions, a description of such conditions.

Notice of any redemption, and any such redemption, of the Series A Preferred Shares may, at the Corporation's discretion, be subject to one or more conditions precedent, including, but not limited to, completion or occurrence of any transaction, or series of transactions, or event, or series of events, as the case may be, and any such notice may, at the Corporation's discretion, be given in advance of completion or occurrence of any transaction, or series of transactions, or event, or series of events, as the case may be. If such redemption is subject to satisfaction of one or more conditions precedent, such notice shall describe each such condition, and if applicable, shall state that, in the Corporation's discretion, the redemption date may be delayed until such time (including more than sixty (60) days after the date the notice of redemption was provided) as any or all such conditions shall be satisfied (or waived by the Corporation in the Corporation's discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Corporation in the Corporation's discretion) by the redemption date, or by the redemption date as so delayed, or such notice may be rescinded at any time in the Corporation's discretion if in the good faith judgment of the Corporation any or all of such conditions will not be satisfied. In addition, the Corporation may provide in such notice that payment of the Redemption Price and performance of the Corporation's obligations with respect to such redemption may be performed by another Person.

If a notice of redemption shall have been so given that is not subject to one or more conditions precedent (or if such conditions precedent have been satisfied or waived by the Corporation in the Corporation's discretion) and if prior to the date of redemption specified in such notice all funds necessary to pay the aggregate Redemption Price for such redemption shall have been irrevocably deposited in trust, for the account of the Holders to be redeemed, with a bank, trustee or trust company named in such notice doing business in New York, New York, and having capital and surplus of at least $500,000,000, then, without awaiting the redemption date, all Series A Preferred Shares with respect to which such notice shall have been so given (and any such conditions precedent shall have been satisfied or waived by the Corporation in the Corporation's discretion) and such deposit shall have been so made thereupon shall, notwithstanding that any certificate for Series A Preferred Shares shall not have been surrendered for cancellation, be deemed no longer to be outstanding, and all rights with respect to such Series A Preferred Shares forthwith upon such deposit in trust shall cease and terminate, except for the right of the Holders thereof on or after the redemption date to receive out of such deposit the applicable Redemption Price, without interest. If the Holders of any Series A Preferred Shares which have been called for redemption shall not within two (2) years (or any longer period required by law) after the applicable redemption date claim any amount so deposited in trust for the redemption of such shares, then such bank or trust company shall, if permitted by applicable law, pay over to the Corporation any such unclaimed amount so deposited with it and thereupon shall be relieved of all responsibility in respect thereof; and thereafter the Holders of such shares shall, subject to applicable unclaimed property laws, look only to the Corporation for payment of the Redemption Price for such shares, without interest.

Upon surrender, in accordance with such notice, of the certificates for any shares so redeemed, the applicable Redemption Price shall be paid in cash by wire transfer of immediately available funds to an account or accounts designated by such Holder.

In the event that less than all of the Series A Preferred Shares represented by any certificate are redeemed, a new certificate representing the unredeemed shares shall be promptly issued to the Holder thereof without cost to such Holder.

Restrictions on Redemption or Repurchase of Series A Preferred Stock, Parity Securities or Junior Securities. Except as set forth below, so long as any shares of Series A Preferred Stock continue to be outstanding, the Corporation shall not, and shall not permit any of its Subsidiaries to (i) redeem or repurchase any Series A Preferred Shares (except on a pro rata basis among all Holders of the Series A Preferred Stock, and subject to the covenants contained in the Corporation's Credit Agreements) or any future shares of Parity Securities (except for any redemptions or repurchases of Parity Securities pursuant to the terms of such Parity Securities on a pro rata basis with the Series A Preferred Stock) or (ii) redeem or repurchase any shares of Common Stock (or shares of any future series of Junior Securities) or any equity interests in any of the Corporation's Subsidiaries for cash or other property or make any distributions of cash or other property with respect to Common Stock (or any other Junior Securities) or any equity interests in any of the Corporation's Subsidiaries; provided, however, that the foregoing shall not prohibit any of the following:

the repurchase, redemption, retirement or other acquisition of equity interests or settlement of equity awards upon any death, disability, retirement or termination of the holder thereof pursuant to any equity plan, equity option plan or other benefit plan approved by the Board or any employment, severance, termination or other agreement approved by the Board;

(x) payments made (including estimated payments) in respect of withholding, payroll, social security or similar taxes or obligations, (y) repurchases (or deemed repurchases) or withholdings of equity interests in connection with the exercise of equity interests or the vesting of equity awards if such interests represent all or a portion of the exercise price thereof, and (z) payments in lieu of the issuance of fractional equity interests;

any distribution, repurchase, redemption, retirement or other acquisition for consideration that consists solely of Junior Securities; or

any dividend or distribution by a Subsidiary of the Corporation to the Corporation or one or more other Subsidiaries of the Corporation and to each other holder of equity of such Subsidiary based on their relative ownership interests of such equity.

Section 10. *Written Consent*. Any action as to which a class vote of the Holders is required pursuant to the terms of this Certificate of Designations or the DGCL may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Holders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Series A Preferred Shares entitled to vote thereon were present and voted and shall be delivered to the Corporation.

Section 11. Pre-Emptive Rights. In the event additional Series A Preferred Shares or shares of any future series of Parity Securities are offered for sale by the Corporation, the Holders will have the right to purchase their respective pro rata shares of the new shares offered, based upon their respective percentage ownership of the Series A Preferred Stock (taken together as a single class). This right will not apply to increases in the Accreted Amount of the Series A Preferred Stock or any similar increase with respect to any Parity Securities.

Section 12. Transfer Restrictions.

Unless the Series A Preferred Stock becomes listed on a national securities exchange, Series A Preferred Shares can be transferred only to institutional "accredited investors" (as defined in Rule 501(a)(1), (a)(2), (a)(3) or (a)(7) under the Securities Act of 1933, as amended (the "**Securities Act**")) in private transactions exempt from registration requirements under federal and state securities laws (and subject to delivery to the Corporation of customary representation letters from the transferor and the transferee and, if requested by the Corporation, a customary legal opinion).

Any transfer of Series A Preferred Stock to a competitor of the Corporation (to be identified on a schedule made available to Holders, which schedule may be updated from time to time by the Board) will be prohibited if not approved in advance by the Board (excluding the vote of the Preferred Directors) or by a majority of a committee of the Board consisting of directors other than the Preferred Directors.

The Series A Preferred Shares will not be subject to any right of first offer/first refusal or any drag-along or tag-along rights or other similar rights.

Section 13. No Conversion or Exchange Rights. The Holders shall not have any right to convert the Series A Preferred Shares into, or to exchange the Series A Preferred Shares for, any other class or series of capital stock or obligations of the Corporation or any Subsidiary of the Corporation, and the Holders shall not have the right to require the Corporation to repurchase, redeem or otherwise acquire the Series A Preferred Stock except as set forth in Section 9 hereof.

Section 14. Related Party Transactions. For so long as any Series A Preferred Shares remain outstanding, and in addition to such review and oversight as may be required pursuant to the rules and regulations of Nasdaq, the approval of at least six (6) directors shall be required for any related person transaction within the meaning of Item 404 of Regulation S-K under the Act, including, without limitation, the adoption of, or any amendment, modification or waiver of, any agreement or arrangement related to any such transaction.

Section 15. Additional Definitions. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

"**ABL Credit Agreement**" means the Amended and Restated Credit Agreement, dated as of August 9, 2019, as such agreement may be amended, amended and restated or otherwise modified or replaced from time to time, among the Corporation, Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the guarantors party thereto from time to time, the lenders party thereto from time to time and Wells Fargo Bank, National Association, as administrative agent.

"**Acceptable Transaction**" means a transaction pursuant to which one hundred percent (100%) of the Common Stock is acquired for cash (including by means of a merger, consolidation, amalgamation or other business combination) by any Person or "group" (as such term is used in Section 13(d)(3) of the Exchange Act) of Persons, so long as concurrently therewith all outstanding indebtedness under the Term Loan Credit Agreement is paid in full in cash; provided that a definitive acquisition agreement with respect to such transaction is entered into and publicly announced by September 30, 2019 and such transaction is consummated within sixty (60) days thereafter.

"**Affiliate**" means, for any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlled by" and "under common control with" have correlative meanings. An "Affiliate" of any Holder shall not include any portfolio companies of such Holder.

"**Business Day**" means any day except a Saturday, a Sunday or any day on which banking institutions in New York, New York are required or authorized by law or other governmental action to be closed.

"**Bylaws**" means the Second Amended and Restated Bylaws of the Corporation, adopted by the Board of Directors on August 9, 2019, as such may be further amended, amended and restated or otherwise modified from time to time in accordance with the terms thereof and the provisions of Section 7 hereof.

"**Certificate of Designations**" means this certificate of designations for the Series A Preferred Stock, to be filed with the Secretary of State of the State of Delaware, as such may be amended, amended and restated or otherwise modified from time to time in accordance with Section 17(g) below.

"**Common Stock**" means the shares of common stock, par value $0.001 per share, of the Corporation.

"**Credit Agreements**" means (i) the ABL Credit Agreement, (ii) the Term Loan Credit Agreement and (iii) any other debt facilities, indentures or other arrangements with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes or other indebtedness, that restates or replaces any of the foregoing, in each case as further amended, amended and restated or otherwise modified or replaced from time to time (whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under the original facilities or credit agreements or one or more other facilities credit agreements or other agreements, indentures, financing agreements or otherwise).

"**DGCL**" means the General Corporation Law of the State of Delaware, as amended from time to time.

"**Holders**" means, at any time, the holders of Series A Preferred Shares as they then appear in the registry for the Series A Preferred Stock in the records of the Corporation.

"**Initial Accreted Amount**" means $100.00 per Series A Preferred Share.

"**Investors**" means the entities named on Schedule 2.01 to the Transaction Agreement.

"**Issue Date**" means August 9, 2019.

"**Junior Securities**" means the Common Stock and each other existing or future class or series of capital stock of the Corporation, except for (x) any Parity Securities and (y) any Senior Securities issued in accordance with Section 7(d) hereof.

(o) "**Permitted Holders**" means, collectively, the following (each, a "Permitted Holder"): (a) each of the Investors, (b) Affiliates of the Persons referred to in the preceding clause (a), (c) any Person that has no material assets (other than Equity Interests in the Corporation, cash and cash equivalents) and of which no Person or "group" (as such term is used in Section 13(d)(3) of the Exchange Act), other than Persons referred to in the preceding clauses (a) and (b), holds more than 30% of the total voting power of the Equity Interests of such Person, and (iv) any "group" the members of which include one or more Permitted Holders (a "Permitted Holder Group"), so long as no Person or "group", other than Persons referred to in the preceding clauses (a), (b) and (c), beneficially owns more than 30% of the total Equity Interests in the Corporation held by the Permitted Holder Group. In addition, Oasis Investments II Master Fund Ltd., solely as a holder of 2023 Oasis Convertible Notes (as defined in the Term Loan Credit Agreement), together with its Affiliates acting in such capacity, shall be deemed to constitute a Permitted Holder; provided, however, that the sentence shall not apply to Oasis Investments II Master Fund Ltd. and its Affiliates in their capacity as holders of Common Stock of the Corporation (including any Common Stock that they receive upon conversion of the convertible notes of the Corporation).

"**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, governmental authority or any other entity.

"**Required Holders**" means, at any time, Holders of more than fifty percent (50%) of the then-outstanding Series A Preferred Shares.

"**Special Board Approval**" means the approval of a majority of the Board then in office, so long as such majority includes at least one Series A Preferred Director.

"**Subsidiary**" shall mean, with respect to the Corporation, any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated in the Corporation's consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity (or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests) or more than fifty percent (50%) of the Voting Stock (measured by voting power rather than the number of shares and without distinction as to any series or class of Voting Stock) are, as of such date, owned or controlled by the Corporation or one or more Subsidiaries of the Corporation or by the Corporation and one or more Subsidiaries of the Corporation.

"**Term Loan Credit Agreement**" means the First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, as such may be amended, amended and restated or otherwise modified or replaced from time to time, among the Corporation, Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the Corporation, as borrower representative, the guarantors party thereto from time to time, the lenders party thereto from time to time and Cortland Capital Market Services LLC, as agent.

"**Transaction Agreement**" means the Transaction Agreement, dated as of August 7, 2019, entered into by and among the Corporation and the parties thereto, including the Investors.

Section 16. *Share Certificates*; Legends.

If any certificates representing Series A Preferred Shares shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Series A Preferred Share certificate of like tenor and representing an equivalent number of Series A Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the Holder thereof, if requested, reasonably satisfactory to the Corporation.

If the Series A Preferred Shares are certificated, each certificate representing Series A Preferred Shares shall contain a legend substantially to the following effect (in addition to any legends required under applicable securities laws):

THIS SECURITY HAS BEEN ACQUIRED FOR INVESTMENT AND WITHOUT A VIEW TO DISTRIBUTION AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER STATE SECURITIES LAWS. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THIS SECURITY OR ANY INTEREST OR PARTICIPATION THEREIN MAY BE MADE EXCEPT (A) IN COMPLIANCE WITH THE PROVISIONS OF THE CERTIFICATE OF DESIGNATIONS AND (B)(1) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AND, IN THE CASE OF CLAUSE (B), PROVIDED THAT THE CORPORATION, IF IT SO REQUESTS, RECEIVES AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE CORPORATION TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

If the Series A Preferred Shares are not certificated, the book-entry or electronic registry shall include an electronic restriction and notation substantially to the effect of the foregoing.

Section 17. Miscellaneous. For purposes of this Certificate of Designations, the following provisions shall apply:

Status of Cancelled Shares. Series A Preferred Shares which have been redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued Series A Preferred Shares, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Series A Preferred Stock of the Corporation.

Severability. If any right, preference or limitation of the Series A Preferred Stock set forth in this Certificate of Designations is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Notices. All notices and other communications hereunder shall be in writing and shall be deemed sufficiently given and served for all purposes (a) when personally delivered or given by machine-confirmed facsimile or by email, (b) one Business Day after a writing is delivered to a national overnight courier service or (c) three Business Days after a writing is deposited in the United States mail, first class postage or other charges prepaid and registered, return receipt requested, in each case, addressed as set forth on the signature page hereto (or at such other address for a party as shall be specified by like notice)

Interpretation. When a reference is made in this Certificate of Designations to Sections, paragraphs, clauses or similar subdivisions, such reference shall be to a Section, paragraph, clause or subdivision to or of this Certificate of Designations unless otherwise indicated. The words “include,” “includes,” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.”

Withholding. All payments, dividends and distributions on the Series A Preferred Stock shall be subject to withholding and backup withholding of tax to the extent required by law, and amounts withheld, if any, shall be treated as received by the Holders in respect of which such amounts were withheld, provided, however, that the Corporation’s withholding obligations with respect to the Series A Preferred Stock shall be subject to the provisions of Section 3.14 of the Transaction Agreement. The Corporation shall have the right to take measures necessary to obtain cash to satisfy the Corporation’s withholding requirements with respect to any dividend or distribution (in each case as determined for U.S. federal income tax purposes) to the Holders, including by retaining, selling or liquidating property of the applicable Holders held by the Corporation in its custody or over which it has control. Each Holder shall indemnify the Corporation and its Affiliates for, and hold harmless the Corporation and its Affiliates from and against, any and all withholding tax, including penalties and interest, payable by or assessed against the Corporation or any of its Affiliates in respect of the Series A Preferred Shares held by such Holder.

Each Holder that is a United States person (as defined for U.S. federal income tax purposes) shall provide to the Corporation an executed copy of IRS Form W-9. Each Holder that is not a United States person shall provide to the Corporation an executed copy of the Form W-8 applicable to such Holder, which Form W-8 shall establish any exemption from, or reduction in, U.S. federal withholding tax to which such Holder is entitled in respect of the Series A Preferred Stock.

Amendment. No provision of this Certificate of Designations may be amended, including pursuant to or as a result of a merger, consolidation or business combination, except in a written instrument signed by the Corporation and approved by a vote or written consent of (i) in the case of those amendments expressly governed by Section 7(a), Section 7(c), Section 7(d) or Section 8, by the applicable percentage of Holders set forth therein with respect to such amendment and (ii) otherwise, the Required Holders. Any of the rights of the Holders set forth herein may be waived by a vote or written consent (i) in the case of those amendments expressly governed by Section 7(a), Section 7(c), Section 7(d) or Section 8, by the applicable percentage of Holders set forth therein and (ii) otherwise, the Required Holders. No waiver of any default with respect to any provision, condition or requirement of this Certificate of Designations shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Equity; No Collateral Protection. The Series A Preferred Stock is equity and has no collateral protection or security.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be executed by a duly authorized officer of the Corporation as of this 9th day of August, 2019.

JAKKS PACIFIC, INC.

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President, Chief Executive Officer and Secretary

Exhibit 3.2

SECOND AMENDED AND RESTATED

BY-LAWS

OF

JAKKS PACIFIC, INC.
(a Delaware corporation)

Adopted August 9, 2019

ARTICLE I
STOCKHOLDERS

1. CERTIFICATES REPRESENTING STOCK. Certificates representing stock in the corporation shall be signed by, or in the name of, the corporation by the Chairman or Vice-Chairman of the board of directors of the corporation (the "Board of Directors"), if any, or by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation. Any or all the signatures on any such certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Whenever the corporation shall be authorized to issue more than one (1) class of stock or more than one (1) series of any class of stock, and whenever the corporation shall issue any shares of its stock as partly paid stock, the certificates representing shares of any such class or series or of any such partly paid stock shall set forth thereon the statements prescribed by the General Corporation Law of the State of Delaware (the "General Corporation Law"). Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of the lost, stolen, or destroyed certificate or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate or uncertificated shares.

2. UNCERTIFICATED SHARES. Subject to any conditions imposed by the General Corporation Law, the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the corporation shall be uncertificated shares. Within a reasonable time after the issuance or transfer of any uncertificated shares, the corporation shall send to the registered owner thereof any written notice prescribed by the General Corporation Law.

3. FRACTIONAL SHARE INTERESTS. The corporation may, but shall not he required to, issue fractions of a share. If the corporation does not issue fractions of a share, it shall (i) arrange for the disposition of fractional interests by those entitled thereto, (ii) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (iii) issue scrip or warrants in registered form (either represented by a certificate or uncertificated) or bearer form (represented by a certificate) which shall entitle the holder to receive a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The Board of Directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the Board of Directors may impose.

4. STOCK TRANSFERS. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the corporation shall be made only on the stock ledger of the corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation or with a transfer agent or a registrar, if any, and, in the case of shares represented by certificates, on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

5. RECORD DATE FOR STOCKHOLDERS. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary of the corporation, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of the stockholders are recorded, to the attention of the Secretary of the corporation. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

6. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be. the term “share” or “shares” or “share of stock” or “shares of stock” or “stockholder” or “stockholders” refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the corporation is authorized to issue only one (1) class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the Amended and Restated Certificate of Incorporation of the corporation (as the same may be amended or amended and restated from time to time, including by any certificate of designations relating to any class or series of preferred stock, including Series A Preferred Stock (as defined below), the “Certificate of Incorporation”) confers such rights where there are two (2) or more classes or series of shares of stock or upon which or upon whom the General Corporation Law confers such rights notwithstanding that the Certificate of Incorporation may provide for more than one (1) class or series of shares of stock, one (1) or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the Certificate of Incorporation, except as any provision of law may otherwise require. All masculine pronouns used in these By-laws shall include both sexes; the singular shall include the plural and the plural the singular unless the context otherwise requires.

7. STOCKHOLDER MEETINGS.

– TIME. There shall be an annual meeting of the stockholders on the date and at the time fixed, from time to time, by the directors within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date and at the time fixed by the directors.

– PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of Delaware, as the directors may, from time to time, fix. Whenever the directors shall fail to fix such place, the meeting shall be held at the registered office of the corporation in the State of Delaware.

– CALL. Annual meetings and special meetings may be called by the directors or by any officer instructed by the directors to call the meeting.

– NOTICE OR WAIVER OF NOTICE. Written notice of all meetings shall be given, stating the place, date, and hour of the meeting and stating the place within the city or other municipality or community at which the list of stockholders of the corporation may be examined. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. The notice of any meeting shall also include, or be accompanied by, any additional statements, information, or documents prescribed by the General Corporation Law. Except as otherwise provided by the General Corporation Law, a copy of the notice of any meeting shall be given, personally or by mail, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and directed to each stockholder at his record address or at such other address which he may have furnished by request in writing to the Secretary of the corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States Mail. If a meeting is adjourned to another time, not more than thirty (30) days hence, and/or to another place, and if an announcement of the adjourned time and/or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the directors, after adjournment, fix a new record date for the adjourned meeting. Notice need not be given to any stockholder who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice.

– STOCKHOLDER LIST. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at place within the city or other municipality or community where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote at any meeting of stockholders.

– CONDUCT OF MEETING. Meetings of the stockholders shall be presided over by one (1) of the following officers in the order of seniority and if present and acting - the Chairman of the Board of Directors, if any, the Vice-Chairman of the Board of Directors, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the Chairman of the meeting shall appoint a secretary of the meeting.

– PROXY REPRESENTATION. Every stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his attorney-in-fact. No proxy shall be voted or acted upon after three (3) years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

– INSPECTORS. The directors, in advance of any meeting, may, but need not, appoint one (1) or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one (1) or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspectors at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question, or matter determined by him or them and execute a certificate of any fact found by him or them. Except as otherwise required by subsection (e) of Section 231 of the General Corporation Law, the provisions of that Section shall not apply to the corporation.

– QUORUM. The holders of a majority of the shares of each class or series of stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders for the transaction of any business. The stockholders present may adjourn the meeting despite the absence of a quorum.

– VOTING. Each share of stock shall entitle the holder thereof to one (1) vote. Each Common Director (as defined below) shall be elected by the vote of the majority of the votes cast with respect to the Common Director at any meeting for the election of Common Directors at which a quorum is present, provided that if the number of nominees for Common Director exceeds the number of Common Directors to be elected, the Common Directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of Common Directors. For purposes of this Section, a majority of votes cast means that the number of shares voted "for" a Common Director must exceed the number of votes cast "against" such Common Director. If a Common Director is not elected, the Common Director shall offer to tender his or her resignation to the Board of Directors. The Corporate Governance and Nominating Committee of the Board of Directors (the "Nominating Committee") will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action is to be taken. The Board of Directors will act on the Committee's recommendation and publicly disclose its decision and the rationale behind it within ninety (90) days from the date of the certification of the election results. The Common Director who tenders his or her resignation will not participate in the Board of Directors' decision. Any other action shall be authorized by a majority of the votes cast by each class or series of stock entitled to vote on such matter except where the General Corporation Law prescribes a different percentage of votes and/or a different exercise of voting power, and except as may be otherwise prescribed by the provisions of the Certificate of Incorporation and these Second Amended and Restated By-laws of the corporation (as the same may be amended or amended and restated from time to time, the "By-laws"). In the election of directors, and for any other action, voting need not be by ballot.

8. STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Action taken pursuant to this paragraph shall be subject to the provisions of Section 228 of the General Corporation Law.

ARTICLE II
DIRECTORS

1. FUNCTIONS AND DEFINITION. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors of the corporation. The Board of Directors shall have the authority to fix the compensation of the members thereof. The use of the phrase "whole board" herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. QUALIFICATIONS AND NUMBER. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The authorized number of directors constituting the whole board shall be seven (7). Subject to the provisions of Article II, Section 3 of these By-laws, the whole board shall be comprised of (i) five (5) Common Directors and (ii) two (2) Series A Preferred Directors (as defined below). The initial Common Directors shall be (A) Stephen G. Berman, Alexander Shoghi and Zhao Xiaoqiang (collectively, the "Continuing Directors") and (B) Joshua Cascade and, effective immediately following the distribution of the information and the expiration of the notice period required under Section 14(f) of the Securities Exchange Act of 1934 and Rule 14f-1 promulgated thereunder, Carole Levine (the "New Independent Common Directors") and the initial Series A Preferred Directors shall be Matthew Winkler and Andrew Axelrod. For so long as any shares of the corporation's "Series A Senior Preferred Stock," par value $0.001 per share ("Series A Preferred Stock" and, the outstanding shares of Series A Preferred Stock at any time of determination, the "Series A Preferred Shares"), remain outstanding, the authorized number of directors constituting the whole board, and the number of Common Directors and Series A Preferred Directors, respectively, may be increased or decreased (i) in accordance with the provisions of Article II, Section 3 of these By-laws or (ii) by action of the stockholders or of the directors, subject in each case to the prior approval of the holders of a majority of the then outstanding Common Stock (as defined below) and the holders of at least eighty percent (80%) of the Series A Preferred Shares, each voting as a separate class.

3. ELECTION AND TERM.

– COMMON DIRECTORS. The Common Directors in office as of the date hereof, any Common Directors who are subsequently elected at an annual meeting of stockholders and directors who are elected as Common Directors in the interim to fill vacancies (and newly created directorships resulting from any increases in the number of Common Directors in accordance with the provisions of these By-laws), unless otherwise provided in the corporation's Certificate of Incorporation, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier death, disability, retirement, resignation or removal. Any Common Director may resign at any time upon written notice to the corporation.

– SERIES A PREFERRED DIRECTORS.

(a) The Series A Preferred Directors in office as of the date hereof, and any Series A Preferred Directors who are subsequently elected as Series A Preferred Directors, by affirmative vote of a majority of the Series A Preferred Shares (the "Required Preferred Holders") at a meeting of holders of Series A Preferred Shares or by written consent of the Required Preferred Holders, shall hold office for the term set forth in the Certificate of Incorporation and until their successors are elected and qualified or until their earlier death, disability, retirement, resignation or removal. Any Series A Preferred Director may resign at any time upon written notice to the corporation.

(b) For so long as at least fifty thousand (50,000) Series A Preferred Shares remain outstanding, (i) the holders of Series A Preferred Shares (the "Preferred Holders") shall have the sole right to nominate, by action of the Required Preferred Holders, candidates to serve as the Series A Preferred Directors, and (ii) the Preferred Holders, voting as a separate class, shall have the sole right to elect, by vote or written consent of the Required Preferred Holders, two (2) individuals to serve as members of the Board of Directors (each such individual, a "Series A Preferred Director"), in each case at a meeting of the Preferred Holders called for such purpose (or by written consent in lieu of any such meeting).

(c) From and after the first annual meeting of stockholders occurring after fewer than fifty thousand (50,000) Series A Preferred Shares remain outstanding, (i) the number of Series A Preferred Directors shall be automatically reduced from two (2) to one (1) (whereupon the term of office of one (1) of the Series A Preferred Directors shall be deemed to have expired at such annual meeting), (ii) the Preferred Holders shall have the sole right to nominate, by action of the Required Preferred Holders, candidates to serve as the Series A Preferred Director, and (iii) the Preferred Holders, voting as a separate class, shall have the sole right to elect, by vote or written consent of the Required Preferred Holders, only one (1) Series A Preferred Director, in each case at a meeting of the Preferred Holders called for such purpose (or by written consent in lieu of any such meeting).

(d) From and after the time no Series A Preferred Shares remain outstanding, the Preferred Holders will no longer have the right to nominate or elect any Series A Preferred Directors (whereupon any Series A Preferred Director shall be deemed to have resigned automatically as of such time).

(e) All director seats not otherwise designated in the preceding paragraphs (b) and (c) as seats for Series A Preferred Directors shall be seats to be held by directors to be elected by the holders of the corporation's common stock, par value $0.001 per share ("Common Stock") (such directors, "Common Directors").

– VACANCIES. Except as the General Corporation Law may otherwise require, in the interim between annual meetings of stockholders or of special meetings of stockholders called for the election of directors and/or for the removal of one (1) or more directors and for the filling of any vacancy in that connection:

(a) any vacancy in the Board of Directors occurring because of the death, disability, retirement, resignation or removal of a Continuing Director, including an unfilled vacancy resulting from the removal of a Continuing Director for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director;

(b) any vacancy in the Board of Directors occurring because of the death, disability, retirement, resignation or removal of a New Independent Common Director, including an unfilled vacancy resulting from the removal of a New Independent Common Director for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director, in each case, solely in accordance with the recommendation of the Nominating Committee of the Board of Directors, with an individual selected by the Nominating Committee from the Preapproved List (as defined in the Nominating and Corporate Governance Committee Charter (the "Nominating Committee Charter")) in accordance with the Nominating Committee Charter; and

(c) any vacancy in the Board of Directors occurring because of the death, disability, retirement, resignation or removal of a Series A Preferred Director, including an unfilled vacancy resulting from the removal of a Series A Preferred Director for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director, in each case, solely with an individual selected by the Required Preferred Holders. In the event that the Required Preferred Holders shall fail to designate in writing a representative to fill the vacant Series A Preferred Director seat on the Board of Directors in accordance with the preceding sentence, then such Board of Directors seat shall remain vacant until such time as the Preferred Holders (voting as a separate class by vote or written consent of the Required Preferred Holders) elect an individual to fill such seat in accordance with this paragraph, and during any period where such seat remains vacant, the Board of Directors nonetheless shall be deemed duly constituted.

4. MEETINGS.

– TIME. Meetings shall be held at such time as the Board of Directors shall fix, except that the first meeting of a newly elected Board of Directors shall be held as soon after its election as the directors may conveniently assemble.

– PLACE. Meetings shall be held at such place within or without the State of Delaware as shall be fixed by the Board of Directors.

– CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board of Directors, if any, the Vice-Chairman of the Board of Directors, if any, of the President, or of a majority of the directors in office.

– NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

– QUORUM AND ACTION. A majority of the whole Board of Directors shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third (1/3) of the whole Board of Directors. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the General Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board of Directors or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

– CHAIRMAN OF THE MEETING. The Chairman of the Board of Directors, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board of Directors, if any and if present and acting, or the President, if present and acting, or any other director chosen by the Board of Directors, shall preside.

5. REMOVAL OF DIRECTORS.

– COMMON DIRECTORS. Except as may otherwise be provided by the General Corporation Law or as otherwise set forth in this Section 5, any Common Director may be removed, with or without cause, by the holders of a majority of the shares of Common Stock then entitled to vote at an election of directors.

– SERIES A PREFERRED DIRECTORS. For so long as any Series A Preferred Shares remain outstanding, a Series A Preferred Director may be removed at any time as a director, with or without cause, upon, and only upon, the affirmative vote of the Required Preferred Holders (voting as a separate class) or written consent of the Required Preferred Holders.

6. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the corporation with the exception of any authority the delegation of which is prohibited by Section 141 of the General Corporation Law, and may authorize the seal of the corporation to be affixed to all papers which may require it. Notwithstanding the foregoing, for so long as any shares of Series A Preferred Stock are outstanding, (i) the Board of Directors shall at all times have a Nominating Committee consisting of three (3) directors, (ii) each of the Series A Preferred Directors shall be a member of the Nominating Committee, so long as such Series A Preferred Director satisfies the "independence" requirements set forth in the Amended and Restated Nominating Committee Charter, (iii) any seat(s) on the Nominating Committee not held by Series A Preferred Directors shall be held by the New Independent Common Directors or any future individuals elected in accordance with the provisions of the Nominating Committee Charter to replace the New Independent Common Directors, (iv) each committee of the Board of Directors (other than the Nominating Committee) shall include at least one (1) Series A Preferred Director, and (v) each director that serves on either the Compensation Committee of the Board of Directors or the Audit Committee of the Board of Directors must be affirmatively determined by the Board of Directors to satisfy the requirements established by the Nasdaq Global Select Market to be considered an "independent" member of the Board of Directors.

7. WRITTEN ACTION. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

ARTICLE III
OFFICERS

The officers of the corporation shall consist of a President, a Secretary, a Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairman of the Board of Directors, a Vice-Chairman of the Board of Directors, an Executive Vice-President, one (1) or more other Vice-Presidents, one (1) or more Assistant Secretaries, one (1) or more Assistant Treasurers, and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Except as may otherwise be provided in the resolution of the Board of Directors choosing him, no officer other than the Chairman or Vice-Chairman of the Board of Directors, if any, need be a director. Any number of offices may be held by the same person, as the directors may determine.

Unless otherwise provided in the resolution choosing him, each officer shall be chosen for a term which shall continue until the meeting of the Board of Directors following the next annual meeting of stockholders and until his successor shall have been chosen and qualified.

All officers of the corporation shall have such authority and perform such duties in the management and operation of the corporation as shall be prescribed in the resolutions of the Board of Directors designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions may be inconsistent therewith. The Secretary or an Assistant Secretary of the corporation shall record all of the proceedings of all meetings and actions in writing of stockholders, directors, and committees of directors, and shall exercise such additional authority and perform such additional duties as the Board of Directors shall assign to him. Any officer may be removed, with or without cause, by the Board of Directors. Any vacancy in any office may be filled by the Board of Directors.

ARTICLE IV
CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE V
FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VI
CONTROL OVER BY-LAWS

Subject to the provisions of the Certificate of Incorporation and the provisions of the General Corporation Law, the power to amend, alter or repeal these By-laws and to adopt new By-laws may be exercised by the Board of Directors or by the stockholders. Notwithstanding the foregoing, subject to the provisions of the General Corporation Law, for so long as any Series A Preferred Shares remain outstanding, (i) none of Section 2, Section 3, Section 5 or the last sentence of Section 6 of Article II or this sentence of this Article VI may be amended, altered or repealed without the prior approval (by affirmative vote or written consent) of holders of at least eighty percent (80%) of the Series A Preferred Shares, and (ii) no other provision of these By-laws may be amended, altered or repealed without the prior approval (by affirmative vote or written consent) of the Required Preferred Holders.

* * *

Adopted: August 9, 2019

Exhibit 10.1

EXECUTION COPY

TRANSACTION AGREEMENT

dated as of

August 7, 2019

by and among

JAKKS PACIFIC, INC.,

THE OTHER COMPANY PARTIES THAT ARE SIGNATORY HERETO,

and

THE OTHER PARTIES LISTED ON THE SIGNATURE PAGES HERETO

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TRANSACTION AGREEMENT

This TRANSACTION AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms hereof, this "Agreement") is dated as of August 7, 2019 by and among (i) JAKKS Pacific, Inc., a Delaware corporation ("JAKKS"), (ii) certain of JAKKS' Subsidiaries (as defined below) and Affiliates (as defined below) listed on the signature pages hereto (collectively, and together with JAKKS, the "Company" or the "Company Parties," and each of the entities that comprise the Company, a "Company Party"), and (iii) the other parties listed on the signature pages hereto. The foregoing parties are sometimes referred to herein individually as a "Party" and together as the "Parties."

RECITALS

WHEREAS, JAKKS is party to that certain Credit Agreement, dated as of March 27, 2014 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof in accordance with the terms thereof, and including all schedules, annexes and exhibits attached thereto, the "Existing Revolving Credit Facility"), among JAKKS, Disguise, Inc., a Delaware corporation ("Disguise"), JAKKS Sales LLC, a Delaware limited liability company formerly known as JAKKS Sales Corporation ("JAKKS Sales"), Maui, Inc., an Ohio corporation ("Maui"), Moose Mountain Marketing, Inc., a New Jersey corporation ("Moose"), and Kids Only, Inc., a Massachusetts corporation ("Kids"), as borrowers, the lenders from time to time party thereto, Wells Fargo Bank, National Association, as successor agent, and the other parties thereto;

WHEREAS, JAKKS is party to that certain Term Loan Agreement, dated as of June 14, 2018 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof in accordance with the terms thereof, and including all schedules, annexes and exhibits attached thereto, the "Existing Term Loan Facility"), among JAKKS, Disguise, JAKKS Sales, Maui, Moose, and Kids, as borrowers, the lenders from time to time party thereto, GACP Finance Co., LLC, as agent (in such capacity, the "Term Loan Agent"), and the other parties thereto;

WHEREAS, certain Parties are beneficial holders, or investment managers for beneficial holders, of notes issued under that certain Indenture, dated as of June 9, 2014 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof in accordance with the terms thereof, and including all schedules, annexes and exhibits attached thereto, the "Convertible Notes Indenture"), among JAKKS, as issuer, and Regions Bank, as successor trustee (in such capacity, the "Convertible Notes Trustee"), pursuant to which there is outstanding as of the date hereof $113,000,000 in aggregate principal amount of JAKKS' 4.875% Convertible Senior Notes due 2020 (the "Convertible Notes");

WHEREAS, pursuant to that certain Convertible Senior Note, dated as of November 7, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, including all schedules, annexes and exhibits attached thereto), JAKKS issued to Oasis Investments II Master Fund Ltd. ("Oasis"), and there is outstanding as of the date hereof, $21,550,000 in aggregate principal amount of a JAKKS Convertible Senior Note (the "2017 Oasis Note");

WHEREAS, pursuant to that certain Convertible Senior Note, dated as of July 26, 2018 (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, including all schedules, annexes and exhibits attached thereto), JAKKS issued to Oasis, and there is outstanding as of the date hereof, $8,000,000 in aggregate principal amount of a JAKKS Convertible Senior Note (the "2018 Oasis Note" and, together with the 2017 Oasis Note, the "Oasis Notes");

WHEREAS, (i) the Consenting Convertible Noteholders (as defined below) beneficially own $103,845,000 in aggregate principal amount of the Convertible Notes, and (ii) the Consenting Oasis Noteholder holds $7,250,000 in aggregate principal amount of the Convertible Notes and $29,550,000 in aggregate principal amount of the Oasis Notes;

WHEREAS, the Parties have engaged in arm's-length, good faith discussions regarding a proposed restructuring, refinancing, and recapitalization transaction concerning the Company; and

WHEREAS, the Parties have agreed to enter into certain restructuring, refinancing and recapitalization transactions and desire to set forth certain terms and conditions relating to, among other things, such restructuring, refinancing, and recapitalization transactions as described herein.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 Defined Terms.

(a) As used herein, each of the following terms has the following meaning:

"Accredited Investor" means, with respect to any Person, an institutional "accredited investor" as that term is defined in Rule 501(a)(1), (2), (3), or (7) under the Securities Act.

"Ad Hoc Group Advisors" means, collectively, Stroock & Stroock & Lavan LLP, CMS Hasche Sigle, Hong Kong LLP, and FTI Consulting, Inc.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; *provided*, *however*, that notwithstanding the foregoing, an Affiliate shall not include any "portfolio company" or "portfolio investment" (as such terms are customarily used among institutional investors) of any Person. For the purpose of this definition, the term "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. It is understood that none of the Consenting Convertible Noteholders shall be deemed an Affiliate of the Company solely because an officer, director or employee of such Consenting Convertible Noteholder or one of its Affiliates serves as a Series A Preferred Director (as defined in the New Preferred Certificate of Designations).

"Amended and Restated Nominating and Corporate Governance Committee Charter" means the Amended and Restated Nominating and Corporate Governance Committee Charter to be adopted by the Board subject to and effective upon the Closing in the form set forth on Exhibit G.

"Amended and Restated Oasis Notes" means (i) the Amended and Restated Oasis Notes requested by the Company Parties to memorialize the amended terms of the Oasis Notes set forth on Exhibit F-1 and Exhibit F-2 hereto, and (ii) the additional note to be issued to Oasis pursuant to Section 2.01(b)(iii) hereof in the form set forth on Exhibit F-3 hereto (the "New Oasis Note").

"Board" means the board of directors of JAKKS.

"Business Day" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by applicable Law to close.

"Certificate of Incorporation" means the Certificate of Incorporation of JAKKS, as the same may be amended or amended and restated from time to time, including by the New Preferred Certificate of Designations.

"Classified Board Proposal" means a proposal to amend the Certificate of Incorporation to classify the Board into three (3) classes, designated Class I, Class II and Class III, with staggered three (3)-year terms, with Class I comprised of two (2) Common Directors (as defined in the New Bylaws) (with their terms expiring at the annual meeting of stockholders to be held in 2021), Class II comprised of three (3) Common Directors, two (2) of whom shall be the New Independent Common Directors (as defined in the New Bylaws) (with their terms expiring at the annual meeting of stockholders to be held in 2022), and Class III comprised of two (2) Series A Preferred Directors (as defined in the New Bylaws) (with their terms expiring at the annual meeting of stockholders to be held in 2023), such classification to be effective as of the date of the annual meeting of stockholders to be held in 2020, or if later, the date of the stockholders' meeting at which the Classified Board Proposal is approved.

"Closing Date" means the date of the Closing.

"Common Stock" means the authorized common stock, par value $0.001 per share, of JAKKS.

"Confidential Information" means all non-public or confidential information, written or oral and in any format, pertaining to the Transactions, JAKKS and its Subsidiaries and Affiliates (collectively, the "JAKKS Entities," and each a "JAKKS Entity") and the business of the JAKKS Entities which has been or will be furnished to any Person or any Representative of such Person, including that portion of all analyses, estimates, projections, compilations, forecasts, studies, summaries, notes, data or other documents prepared by any Person or its Representatives to the extent they contain or reflect any Confidential Information; *provided* that the term "Confidential Information" does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Person or its Representatives to whom Confidential Information is provided that is known to be in violation of any confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality to any JAKKS Entity with respect to such information, (ii) a Person can reasonably show was within such Person's possession, or the possession of one or more of its Representatives, prior to it being furnished to such Person by or on behalf of any JAKKS Entity, provided that the source of such information was not known by such Person to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to any of the JAKKS Entities, any of their Representatives or any other party with respect to such information, (iii) was independently developed by a Person or its Representatives to whom Confidential Information is provided without use of, reference to or reliance upon Confidential Information, (iv) is expressly permitted by the JAKKS Entities or their Representatives to be disclosed to third parties on a non-confidential basis, or (v) is or becomes generally available to a Person or its Representatives to whom Confidential Information is provided, or was obtained from a third party on a non-confidential basis from a source not known to such Person or its Representatives, at the time of such disclosure, (a) to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation to any JAKKS Entity or any of its Representatives, or (b) to have received such information as a result of any breach of any other contractual, legal or fiduciary or other obligation to the JAKKS Entities or their Representatives to keep such information confidential.

"Consenting Convertible Noteholders" means the beneficial holders, or the investment managers for the beneficial holders, of the Convertible Notes other than Oasis and its Affiliates, in their capacities as such, that have executed this Agreement as set forth on the signature pages hereto, or have become parties to this Agreement through a Joinder pursuant to Section 3.05(a)(iv).

"Consenting Convertible Noteholders Registration Rights Agreement" means that certain registration rights agreement to be entered into within thirty (30) days after the Closing Date by and among JAKKS and the Consenting Convertible Noteholders relating to, among other things, the registration of the shares of Common Stock issued on the Closing Date, which registration rights agreement shall be substantially similar to, and shall confer registration rights that are *pari passu*, and shared on a *pro rata* basis, with the registration rights of Oasis as set forth in, the Oasis Registration Rights Agreement set forth on Exhibit J hereto and otherwise in form and substance reasonably acceptable to the Consenting Convertible Noteholders.

"Consenting Noteholders" means, collectively, the Consenting Convertible Noteholders and the Consenting Oasis Noteholder.

"Consenting Oasis Noteholder" means the holder of the Oasis Notes that has executed this Agreement as set forth on the signature pages hereto, or any future holders of any Oasis Notes that have become parties to this Agreement through a Joinder pursuant to Section 3.05(a)(iv).

"Consenting Oasis Noteholder Advisor" means Schulte Roth & Zabel LLP.

"Damages" means any damages, liabilities, losses, injuries, contributions, indemnities, compensation, obligations, costs, attorney's fees and expenses of any kind and nature whatsoever, whether known or unknown, fixed or contingent, in law or in equity, sounding in tort or in contract and whether or not asserted.

"Employment Agreement Acknowledgements" means the acknowledgements regarding certain enumerated provisions in the JAKKS employment agreements of Jack McGrath and Brent Novak, in the form set forth on Exhibit L hereto.

"Employment Agreement Amendment" means Amendment No. 3 to the Second Amended and Restated Employment Agreement of Stephen Berman to be executed and otherwise become effective upon the Closing in the form set forth on Exhibit H hereto.

"Enforceability Exceptions" means (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity.

"Escrow Agreement" means that certain escrow agreement to be entered into on or about the date of this Agreement between Cortland Capital Market Services LLC, as escrow agent (in such capacity, the "Escrow Agent") and the funding entities parties thereto, attached hereto as Exhibit I.

"Exchange Act" means the Securities Exchange Act of 1934, as amended (together with the rules and regulations promulgated thereunder).

"First Lien Credit Agreement" means that certain First Lien Term Loan Facility Credit Agreement, dated as of the Closing Date (as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms thereof, and including all schedules, annexes and exhibits attached thereto), among JAKKS, Disguise, JAKKS Sales, Maui, Moose, and Kids, as borrowers, the lenders from time to time party thereto, Cortland Capital Market Services LLC ("Cortland"), as administrative agent, and the other parties thereto, substantially in the form set forth on Exhibit C hereto.

"First Lien Obligations" means the first lien term loan obligations pursuant to the First Lien Credit Agreement in an aggregate principal amount equal to (a) the aggregate principal amount of Convertible Notes tendered by the Consenting Convertible Noteholders pursuant to this Agreement, *plus* (b) accrued and unpaid interest on such Convertible Notes to the Closing Date, *plus* (c) the New Money Investment.

"Governance Agreements" means each of the Voting Agreements, the New Bylaws, the Amended and Restated Nominating and Corporate Governance Committee Charter, and the New Preferred Certificate of Designations.

"Governmental Authority" means any transnational, domestic or foreign federal, state or local government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court, tribunal, or judicial or arbitral body.

"Insolvency Proceeding" means any proceeding, proposal, corporate action or other procedure commenced or other step taken (including the making of an application, the presentation of a petition, the filing or service of a notice or the passing of a resolution) by or against any person under any provision of Title 11 of the U.S. Code or any other applicable state, provincial, territorial or federal bankruptcy or insolvency laws in effect from time to time in any jurisdiction, including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and including any rules and regulations pursuant thereto, including winding-up, dissolution, administration, assignments for the benefit of any class of creditors, formal or informal moratoria, compositions, compromises, suspension of payments, extensions generally with any class of creditors, or proceedings seeking reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), arrangement, or other similar relief (including suspension of payments), or a custodian or a trustee, receiver, monitor, liquidator, administrator, administrative receiver, compulsory manager or similar custodian is appointed for, or takes charge of, all or substantially all of the property of any person.

"Law" means any transnational, domestic or foreign federal, state or local statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law, including the common law.

"Material Adverse Effect" means any material adverse effect on: (i) the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of any Company Party, individually or taken as a whole; (ii) the legality, validity, binding effect or enforceability of any of the Transaction Documents with respect to any Company Party; or (iii) the authority or ability of any Company Party to perform its obligations hereunder and under the other Transaction Documents.

"New Bylaws" means the Second Amended and Restated Bylaws of JAKKS, to be adopted by the Board subject to and effective upon the Closing, in the form set forth on Exhibit A hereto.

"New Common Equity" means the number of shares of Common Stock, having the rights, restrictions and limitations (and subject to the rights of holders of Preferred Stock) set forth in the Certificate of Incorporation and the New Bylaws, equal to 19.9% of the outstanding shares of Common Stock (determined prior to the consummation of the Transactions contemplated by this Agreement) as of the Closing Date.

"New Intercreditor Agreement" means that certain intercreditor agreement governing the intercreditor relationships between the lenders under the New Revolving Credit Facility and the holders of the First Lien Obligation to be executed and otherwise become effective upon the Closing substantially in the form set forth on Exhibit E hereto.

"New Management Incentive Plan" means JAKKS' Amended and Restated Management Incentive Plan to be adopted after the Closing Date by the Board.

"New Money Investment" means the total amount of $30,000,000 in cash to be delivered by the Consenting Convertible Noteholders at the Closing in accordance with Section 2.01(a).

"New Preferred Certificate of Designations" means the Certificate of Designations of the New Preferred Stock to be filed with the Secretary of State of the State of Delaware prior to the Closing and effective as of the Closing in the form set forth on Exhibit B hereto.

"New Preferred Equity" means the 200,000 shares of Series A Senior Preferred Stock of JAKKS, such shares having the rights, restrictions and limitations set forth in the New Preferred Certificate of Designations, to be issued by JAKKS at Closing.

"New Revolving Credit Facility" means that certain revolving credit facility which on the Closing Date shall replace the Existing Revolving Credit Facility, pursuant to the New Revolving Credit Facility Credit Agreement.

"New Revolving Credit Facility Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of the Closing Date (as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms thereof, and including all schedules, annexes and exhibits attached thereto), among JAKKS, Disguise, JAKKS Sales, Maui, Moose, and Kids, as borrowers, the lenders from time to time party thereto, Wells Fargo Bank, National Association, as administrative agent, and the other parties thereto, substantially in the form set forth on Exhibit D hereto.

"New Securities" means, collectively, the New Common Equity and New Preferred Equity.

"Nominating Committee" means the Nominating and Corporate Governance Committee of the Board.

"Notes" means, collectively, the Convertible Notes and the Oasis Notes.

"Oasis Registration Rights Agreement" means that certain registration rights agreement dated as of the Closing Date by and among JAKKS and the Oasis Consenting Noteholders relating to, among other things, the registration of the resale of the shares of Common Stock issuable upon conversion of the Amended and Restated Oasis Notes, in the form set forth on Exhibit J.

"Organizational Documents" means, with respect to any Person (other than an individual), the certificate or articles of incorporation or organization or memorandum of association of such Person (including, if applicable, any certificates of designation associated therewith) and any limited liability company, operating or partnership agreement, bylaws, bye-laws, trust agreement or similar documents or agreements relating to the legal organization or governance of such Person, in each case as may be amended from time to time in accordance therewith.

"Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Preferred Stock" means the authorized preferred stock, par value $0.001 per share, of JAKKS.

"Representatives" means any Person or such Person's Affiliates and its and its Affiliates' respective directors, managers, officers, partners, members, employees, current investors, prospective investors, advisors (including, without limitation, attorneys, accountants, consultants, bankers and financial advisors), experts, representatives or agents.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended (together with the rules and regulations promulgated thereunder).

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time, directly or indirectly, owned by such Person.

"Transaction Documents" means, collectively, this Agreement, the Oasis Registration Rights Agreement, the Amended and Restated Oasis Notes, the Voting Agreements, the New Bylaws, the Amended and Restated Nominating and Corporate Governance Committee Charter, the First Lien Credit Agreement, the New Intercreditor Agreement, the New Preferred Certificate of Designations, the New Revolving Credit Facility Credit Agreement, the Employment Agreement Amendment, the Employment Agreement Acknowledgements, the Escrow Agreement, and any additional definitive documents relating to any of the foregoing.

"Voting Agreements" means, collectively, each of the Voting Agreements to be executed and delivered by JAKKS and certain of its stockholders, each in forms agreed upon by the Consenting Convertible Noteholders, and, in the case of the Voting Agreement to be executed and delivered by the Consenting Oasis Noteholder, in a form agreed upon by the Consenting Oasis Noteholder and the Consenting Convertible Noteholders.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
2017 Oasis Note	Recitals
2018 Oasis Note	Recitals
Agreement	Preamble
Claim	Section 6.15
Claims	Section 6.15
Closing	Section 2.02(a)
Company	Preamble
Company Parties	Preamble
Company Party	Preamble
Convertible Notes	Recitals
Convertible Notes Indenture	Recitals
Convertible Notes Trustee	Recitals
Disguise	Recitals

DTC	Section 2.01(a)(i)(B)
End Date	Section 5.01(b)
Escrowed Cash Amount	Section 2.01(a)(i)(A)
Escrowed Convertible Notes	Section 2.01(a)(i)(B)
Escrowed Oasis Convertible Notes	Section 2.01(b)(ii)
Existing Revolving Credit Facility	Recitals
Existing Term Loan Facility	Recitals
GAAP	Section 3.04(g)
JAKKS	Preamble
JAKKS Sales	Recitals
Joinder	Section 3.05(a)(iv)
Kids	Recitals
Legal Restraint	Section 4.01(a)
Maui	Recitals
Moose	Recitals
NASDAQ	Section 3.11
Non-Recourse Party	Section 6.14
Oasis	Recitals
Oasis Notes	Recitals
Oasis Notes Cash Interest Payment	Section 2.01(b)(iii)
Parties	Preamble
Party	Preamble
Related Party	Section 6.15
Releasees	Section 6.15
Releasing Parties	Section 6.15
Rule 144	Section 3.05(c)(i)
Rule 144A	Section 3.05(c)(i)
SEC Documents	Section 3.04(g)
Securities Law Restrictions	Section 3.05(c)(i)
Stockholder Approval	Section 3.11
Stockholder Meeting	Section 3.11
Term Loan Agent	Recitals
Transactions	Section 2.01
Transfer	Section 3.05(a)(iv)

Section 1.02 Other Definitional and Interpretative Provisions. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this Agreement unless otherwise specified. All Schedules or Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term, the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. All references to a particular statute or other Law shall be deemed to include all rules and regulations thereunder in effect from time to time. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE 2

TRANSACTIONS

Section 2.01 Transactions. Upon the terms and subject to the conditions set forth herein, each Consenting Noteholder hereby agrees with the Company, and the Company hereby agrees with each Consenting Noteholder, that, at and effective as of the Closing, each of the following transactions (the "Transactions") shall occur on the Closing Date (except that the delivery of the New Money Investment into escrow described in subparagraph (a)(i)(A) below and the delivery of the Convertible Notes into escrow described in subparagraphs (a)(i)(B) and (b)(ii) below shall occur at least one (1) Business Day prior to the Closing Date as set forth in such subparagraphs):

(a) Convertible Noteholder Transactions.

(i) At least one (1) Business Day prior to the Closing Date, each Consenting Convertible Noteholder:

(A) shall deliver, or cause to be delivered, to the Escrow Agent, to be held and applied at the Closing (subject to written confirmation by the Company and by the Consenting Convertible Noteholders (or on their behalf by Stroock & Stroock & Lavan LLP, as an Ad Hoc Group Advisor) as to satisfaction (or waiver in writing by the Consenting Convertible Noteholders) of the conditions to Closing set forth herein) in accordance with the Escrow Agreement, cash in the amount set forth on Schedule 2.01 opposite the name of such Consenting Convertible Noteholder, which amount shall be equal to such Consenting Convertible Noteholder's *pro rata* share (based on the principal amount of the Convertible Notes beneficially owned by (or by funds or accounts managed by) such Consenting Convertible Noteholder relative to the aggregate principal amount of the Convertible Notes beneficially owned by (or by funds or accounts managed by) all Consenting Convertible Noteholders) of the New Money Investment, and which, together with the cash amount from, or from funds or accounts managed by, each other Consenting Convertible Noteholder, shall total the New Money Investment (the "Escrowed Cash Amount"), by wire transfer of immediately available funds in U.S. dollars to an account with the Escrow Agent specified by the Company; and

(B) agrees to effect, or cause to be effected, by book entry transfer, in accordance with the applicable procedures of The Depository Trust Company ("DTC"), the delivery in escrow to the Convertible Notes Trustee of the aggregate principal amount of Convertible Notes set forth under its signature hereto (the "Escrowed Convertible Notes").

(ii) At the Closing, subject to written confirmation by the Company and by the Consenting Convertible Noteholders (or on their behalf by Stroock & Stroock & Lavan LLP, as an Ad Hoc Group Advisor) as to satisfaction (or waiver in writing by the Consenting Convertible Noteholders) of the conditions to Closing set forth herein, (x) the Escrow Agent shall, in accordance with the Escrow Agreement, deliver to JAKKS the Escrowed Cash Amount, and (y) the Company shall instruct the Convertible Notes Trustee to cancel the Escrowed Convertible Notes, in exchange for the issuance by JAKKS to, or to funds or accounts managed by, each such Consenting Convertible Noteholder, in accordance with Schedule 2.01 or as otherwise stated by a Consenting Convertible Noteholder in written instructions to be delivered to JAKKS prior to the Closing Date, of the following:

(A) the number of shares of New Common Equity as set forth on Schedule 2.01 opposite the name of such Consenting Convertible Noteholder, evidenced by one or more share certificates in the name of, or in accordance with the written instructions delivered by, such Consenting Convertible Noteholder;

(B) the number of shares of New Preferred Equity as set forth on Schedule 2.01 opposite the name of such Consenting Convertible Noteholder, evidenced by one or more share certificates in the name of, or in accordance with the written instructions delivered by, such Consenting Convertible Noteholder; and

(C) First Lien Obligations in the principal amount set forth on Schedule 2.01 opposite the name of such Consenting Convertible Noteholder.

(iii) Each of the Consenting Convertible Noteholders acknowledges and agrees that the receipt by, or by funds or accounts managed by, such Consenting Convertible Noteholder of the New Common Equity, New Preferred Equity, and First Lien Obligations set forth opposite its name on Schedule 2.01 shall be in consideration for the New Money Investment and the surrender by, or by funds or accounts managed by, such Consenting Convertible Noteholder of all Convertible Notes beneficially owned by, or by funds or accounts managed by, such Consenting Convertible Noteholder, and shall be in full satisfaction of any and all obligations owed to, or to funds or accounts managed by, such Consenting Convertible Noteholder in connection with the Convertible Notes beneficially owned by, or by funds or accounts managed by, such Consenting Convertible Noteholder, as set forth below such Consenting Convertible Noteholders' signature hereto, including the aggregate principal amount of, and the accrued but unpaid interest on such Convertible Notes and any and all fees, premium, expenses and other obligations with respect to such Convertible Notes.

(b) Oasis Noteholder Transactions.

(i) At the Closing, without the need for any further approval, documentation or action of any kind by the Consenting Oasis Noteholder or the Company, the Oasis Notes shall be amended pursuant to the terms of Exhibit F-1 and Exhibit F-2 hereto.

(ii) At least one (1) Business Day prior to the Closing Date, the Consenting Oasis Noteholder agrees to effect, by book entry transfer, in accordance with the applicable procedures of DTC, the delivery to the Convertible Notes Trustee of the aggregate principal amount of Convertible Notes set forth under its signature hereto (the "Escrowed Oasis Convertible Notes").

(iii) At the Closing, subject to written confirmation by the Company and by the Consenting Oasis Noteholder (or on their behalf by Schulte Roth & Zabel LLP as legal counsel to the Consenting Oasis Noteholder) as to satisfaction (or waiver in writing by the Consenting Oasis Noteholder) of the conditions to Closing set forth herein, (x) the Company shall instruct the Convertible Notes Trustee to cancel the Escrowed Oasis Convertible Notes, in exchange for the issuance by JAKKS to the Consenting Oasis Noteholder of the New Oasis Note, and (y) the Company shall pay to the Consenting Oasis Noteholder the amount of accrued but unpaid interest with respect to the Oasis Notes and the Escrowed Oasis Convertible Notes set forth opposite the name of the Consenting Oasis Noteholder on Schedule 2.01 (the "Oasis Notes Cash Interest Payment").

(iv) The Consenting Oasis Noteholder acknowledges and agrees that the receipt of the Amended and Restated Oasis Notes and the Oasis Notes Cash Interest Payment shall be in full satisfaction of any and all obligations owed to the Consenting Oasis Noteholder in connection with the Oasis Notes and the Convertible Notes beneficially owned by the Consenting Oasis Noteholder, as set forth below the Consenting Oasis Noteholder's signature hereto, including the aggregate principal amount of, and the accrued but unpaid interest on such Oasis Notes and Convertible Notes and any and all fees, premium, expenses and other obligations with respect to such Oasis Notes and Convertible Notes.

(c) Revisions to Schedule 2.01. If the Closing Date is after August 9, 2019, then the Company shall provide a notice not less than one (1) Business Day prior to the Closing Date to the Consenting Noteholders substantially in the form of Schedule 2.01(c) setting forth:

(i) the revised Closing Date; and

(ii) taking into account the revised Closing Date, a revised Schedule 2.01 solely with respect to revisions to calculate the revised accrued but unpaid interest owed to:

(A) each Consenting Convertible Noteholder as of the revised Closing Date on account of the Convertible Notes, and any additional First Lien Obligations to be issued to such Consenting Convertible Noteholder as a result of such later Closing Date; and

(B) the Consenting Oasis Noteholder on account of the Oasis Notes Cash Interest Payment as of the revised Closing Date as a result of such later Closing Date.

(d) Certain Governance Agreements.

(i) At the Closing, the New Preferred Certificate of Designations will become effective having previously been duly filed with the Secretary of State of the State of Delaware.

(ii) At the Closing, each of JAKKS and the Consenting Oasis Noteholder agrees to enter into the Oasis Registration Rights Agreement.

(iii) At the Closing, JAKKS shall enter into Voting Agreements with each of (v) Hong Kong Meisheng Cultural Company Limited, (w) the Consenting Oasis Noteholder, (x) Consenting Convertible Noteholders holding, together with the Convertible Notes held by the Consenting Oasis Noteholder, at least ninety percent (90%) in principal amount of the Convertible Notes, (y) the current directors and officers of JAKKS beneficially owning shares of Common Stock, and (z) certain additional stockholders, which shall become effective as of the Closing and that, collectively, cover at least forty-five percent (45%) of the total outstanding Common Stock immediately after giving effect to the consummation of the Transactions.

(iv) At the Closing, the New Bylaws will become effective having been adopted by the Board subject to, and contemporaneously with, the Closing.

(v) At the Closing, the Amended and Restated Nominating and Corporate Governance Committee Charter will become effective having been adopted by the Board as the charter of the Nominating Committee subject to, and contemporaneously with, the Closing.

(e) Employment Agreement Amendment. At the Closing, the Employment Agreement Amendment will become effective having been adopted subject to, and contemporaneously with, the Closing by JAKKS and the applicable employee.

(f) Existing Term Loan Facility. On the Closing Date, JAKKS will use a combination of (a) proceeds from the New Money Investment, and (b) cash on hand to pay in full the outstanding amounts and to satisfy any other payment obligations due under the Existing Term Loan Facility.

(g) Existing Revolving Credit Facility. On the Closing Date, JAKKS will enter into the New Revolving Credit Facility Credit Agreement providing for a $60,000,000 New Revolving Credit Facility.

Section 2.02 Closing.

(a) The closing of the Transactions (the "Closing") shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 300 S. Grand Avenue, Suite 3400, Los Angeles, California 90071, or remotely by the exchange of documents and signatures (or their electronic counterparts), one (1) Business Day after the day on which all conditions set forth in Article 4 have been satisfied or, to the extent permitted under applicable Law, waived in writing by the Party or Parties entitled to the benefit of such conditions (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted under applicable Law, waiver in writing of those conditions at the Closing by the Party or Parties entitled to the benefit of such conditions), or at such other time or place as JAKKS and the Consenting Noteholders may mutually agree in writing.

(b) All Transactions and other acts, deliveries and confirmations comprising the Closing, regardless of chronological sequence, shall be deemed to occur contemporaneously and simultaneously upon the occurrence of the last act, delivery or confirmation of the Closing, and none of such acts, deliveries or confirmations shall be effective unless and until the last of the same shall have occurred.

ARTICLE 3

OTHER AGREEMENTS OF THE PARTIES; REPRESENTATIONS AND WARRANTIES

Section 3.01 Execution of Definitive Agreements. (a) JAKKS shall, and shall cause each other Company Party to, and (b) each Consenting Noteholder shall, deliver to each counterparty to a Transaction Document, a duly executed counterpart of each Transaction Document which such Party is required to execute and deliver pursuant to this Agreement or any of the other Transaction Documents.

Section 3.02 Reasonable Best Efforts; Further Assurances. Subject to the terms and conditions of this Agreement, the Parties will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Laws to consummate the Transactions. Each Party shall execute and deliver such instruments, documents, or other writings as may be reasonably necessary to confirm and carry out and to effectuate the Transactions and the intent and purposes of this Agreement.

Section 3.03 Representations and Warranties of the Parties. Each of the Consenting Noteholders (on behalf of itself and not on behalf of any other Consenting Noteholder) hereby represents and warrants to each Company Party, and each Company Party hereby represents and warrants to each Consenting Noteholder, as follows as of the date hereof and as of the Closing Date:

(a) Due Organization; Authorization. Such Party is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation. The execution, delivery and performance by such Party of the Transaction Documents to which such Party is a party and the consummation by such Party of the transactions contemplated hereby and thereby are within such Party's legal powers and capacity. The execution and delivery by such Party of the Transaction Documents to which such Party is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved, and no other proceeding, consent or authorization on the part of such Party is necessary to authorize entry into this Agreement and the other Transaction Documents to which such Party is a party or to consummate the transactions contemplated hereby and thereby. Assuming the due authorization, execution and delivery of this Agreement and the other Transaction Documents to which such Party is a party by the other parties hereto and thereto, this Agreement and the other Transaction Documents to which such Party is a party each constitutes a valid and binding agreement of such Party, enforceable against such Party in accordance with its terms, subject to the Enforceability Exceptions.

(b) Governmental Authorization. The execution, delivery and performance by such Party of this Agreement and the other Transaction Documents to which such Party is a party and the consummation by such Party of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority (except for any filings required following the date of this Agreement under the Securities Act or Exchange Act).

(c) Non-Contravention. The execution, delivery and performance by such Party of this Agreement and the other Transaction Documents to which such Party is a party and the consummation by such Party of the relevant transactions contemplated hereby and thereby do not and will not (i) violate the Organizational Documents of such Party that is not a natural person, (ii) violate any applicable Law, rule or regulation binding on such Party or any judgment, injunction, order or decree to which such Party is a party or is bound or (iii) require any consent or other action by any Person or constitute a default under, or give rise to any right of termination, cancellation or acceleration of, or any right of a third party to require repayment, redemption or repurchase by the Company of, any right or obligation of such Party under any agreement or other instrument binding upon such Party, other than such consents, actions, defaults or rights of termination, cancellation or acceleration under contracts that are not material, or, in the case of the Company, that would not, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.04 Additional Representations and Warranties of JAKKS. JAKKS hereby represents and warrants to the other Parties as follows on the date hereof and on the Closing Date:

(a) Valid Issuance. As of the Closing Date, the New Preferred Certificate of Designations shall have been duly filed with the Secretary of State of the State of Delaware and the New Common Equity, and New Preferred Equity to be issued hereunder will have been duly authorized by JAKKS and when delivered to, and the consideration specified herein is paid by, the Consenting Convertible Noteholders on the Closing Date in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable and will not be subject to, and will not have been issued in violation of, any preemptive, participation, rights of first refusal or other similar rights. As of the Closing Date, the Amended and Restated Oasis Notes will have been duly authorized by JAKKS and, when executed and delivered to the Consenting Oasis Noteholder against delivery of the Oasis Notes and the Escrowed Oasis Convertible Notes, as applicable, in accordance with the terms of this Agreement, the Amended and Restated Oasis Notes will be valid and binding obligations of JAKKS, enforceable against JAKKS in accordance with their terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity. The Amended and Restated Oasis Notes (a) will be authorized, executed and delivered in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 3(a)(9) of the Securities Act, (b) will be approved under Rule 16b-3 of the Exchange Act, (c) will, at the Closing, be free of any restrictions on resale by the holder thereof pursuant to Rule 144 promulgated under the Securities Act other than such restrictions imposed on such holder by virtue of its affiliate status with the Company and free of any restrictive legend, and (d) will be authorized, executed and delivered in compliance with all applicable state and federal laws. For the purposes of Rule 144 promulgated under the Securities Act, the Company acknowledges that (i) the holding period of the Amended and Restated Oasis Notes issued in exchange of the 2017 Oasis Note and of any other securities that may be issued to the Consenting Oasis Noteholder pursuant to the terms of such Amended and Restated Oasis Notes may be tacked onto the holding period of the 2017 Oasis Note and that the holding period of the 2017 Oasis Note may be tacked onto the holding period of the Convertible Notes that were surrendered to JAKKS upon issuance to the Consenting Oasis Noteholder of the 2017 Oasis Note, (ii) the holding period of the Amended and Restated Oasis Notes issued in exchange of the 2018 Oasis Note and of any other securities that may be issued to the Consenting Oasis Noteholder pursuant to the terms of such Amended and Restated Oasis Notes may be tacked onto the holding period of the 2018 Oasis Note and that the holding period of the 2018 Oasis Note may be tacked onto the holding period of the Convertible Notes that were surrendered to JAKKS upon issuance to the Consenting Oasis Noteholder of the 2018 Oasis Note, and (iii) the holding period of the New Oasis Note issued in exchange of the Escrowed Oasis Convertible Notes and of any other securities that may be issued to the Consenting Oasis Noteholder pursuant to the terms of such New Oasis Note may be tacked onto the holding period of the Escrowed Oasis Convertible Notes, and JAKKS agrees not to take a position contrary thereto. Subject to receipt of any required approval of JAKKS stockholders as set forth in Section 3.11 with respect to any shares of Common Stock issuable in excess of the Exchange Cap (as defined in the Amended and Restated Oasis Notes), the shares of Common Stock issuable pursuant to the terms of the Amended and Restated Oasis Notes have been duly authorized and reserved by JAKKS for issuance pursuant to the terms of the Amended and Restated Oasis Notes and, when issued pursuant to the terms of the Amended and Restated Oasis Notes, will be validly issued, fully paid and non-assessable, and the issuance of the shares of Common Stock issuable pursuant to the terms of the Amended and Restated Oasis Notes will not be subject to any preemptive, participation, rights of first refusal or other similar rights.

(b) Capitalization. As of the Closing, after giving effect to the consummation of the Transactions, (i) the authorized capitalization of JAKKS shall consist of (A) 100,000,000 shares of Common Stock, and (B) 5,000,000 shares of Preferred Stock, including 200,000 shares of New Preferred Equity, and (ii) the number of shares of (A) total Common Stock outstanding shall be 35,265,075 shares (including 5,853,002 shares of New Common Equity but not including 3,112,840 treasury shares), and (B) New Preferred Equity outstanding shall be 200,000 shares, (iii) 37,747,665 shares of Common Stock shall be reserved for future issuance upon conversion of outstanding Convertible Notes and Amended and Restated Oasis Notes, and (iv) 940,885 shares of Common Stock shall be reserved for future issuance pursuant to outstanding employee equity awards.

(c) Financing. The Company Parties will have sufficient funds on hand (after giving effect to the incurrence of the First Lien Obligations) to consummate the transactions contemplated hereby, including the payment of all related fees and expenses.

(d) New Money Investment. The New Money Investment shall be sufficient for the payment of each of the cash payments and disbursements required to be made by the Company Parties at the Closing pursuant to this Agreement, and all related fees and expenses.

(e) Equity Issuance. The issuance of the New Common Equity and New Preferred Equity does not violate any agreements to which any of the Company Parties is currently a party and does not violate, or result in, any preemptive rights of third parties.

(f) Other Material Agreements. No material agreements to which JAKKS or any Company Party is a party shall be terminated or invalidated solely due to the consummation of the Transactions, except as expressly contemplated by the Transaction Documents.

(g) SEC Documents. Since January 1, 2018, JAKKS has filed with (or furnished to) the SEC, on a timely basis, all forms, reports and other documents required to be filed with or furnished to the SEC under the Securities Act or the Exchange Act (collectively, with any amendments thereto, the "SEC Documents"). The consolidated financial statements included in the SEC Documents (including the related notes and schedules thereto) have been prepared in all material respects in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and, on that basis, fairly presented in all material respects the consolidated financial position, results of operations, changes in stockholder's equity and cash flows of the Company as of the indicated dates and for the indicated periods (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto).

(h) Bylaws. The Bylaws of JAKKS, as currently in effect, are the Amended and Restated Bylaws filed with the SEC as an exhibit to JAKKS' Current Report on Form 8-K filed October 21, 2011, as amended on December 19, 2014, which amendment is described in JAKKS' Proxy Statement on Schedule 14A filed on November 7, 2014.

(i) Voting Agreements. As of the date hereof, JAKKS has obtained Voting Agreements with certain parties, as set forth on Schedule 3.04(i) hereto, which collectively represent approximately fifty percent (50%) of the total outstanding Common Stock immediately after giving effect to the consummation of the Transactions, which Voting Agreements shall become effective as of the Closing. As of the date hereof, Schedule 3.04(i) is true and correct in all material respects (excluding the information in Schedule 3.04(i) regarding the Consenting Convertible Noteholders other than Citadel Equity Fund Ltd.), after giving effect to the consummation of the Transactions.

Section 3.05 Additional Representations, Warranties and Agreements of the Consenting Noteholders. Each Consenting Noteholder, severally and not jointly, hereby represents and warrants to each Company Party as follows on the date hereof and on the Closing Date:

(a) Ownership; Good Title.

(i) Such Consenting Noteholder (i) is, or is the investment manager for, the beneficial owner of or has binding commitments to purchase the aggregate principal amount of Convertible Notes and/or Oasis Notes, as applicable, set forth below its signature hereto; (ii) has full power and authority to act on behalf of, vote and consent to matters concerning such Notes, as applicable, and to dispose of, exchange, assign, and transfer such Notes; and (iii) does not otherwise own, hold or control any Notes other than as set forth below its signature hereto.

(ii) Such Consenting Noteholder's Convertible Notes and/or Oasis Notes, as applicable, are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition or encumbrance of any kind that would adversely affect in any way such Consenting Noteholder's performance of its obligations contained in this Agreement at the time such obligations are required to be performed.

(iii) Such Consenting Noteholder has made no prior assignment, sale, participation, grant, conveyance, pledge, or other Transfer (as defined below) of, and has not entered into any other agreement to assign, sell, participate, grant, convey, pledge, or otherwise Transfer, in whole or in part, any portion of its right, title, or interests (economic or otherwise) in any of its Convertible Notes and/or Oasis Notes, as applicable, except, in each case, pledges that such Consenting Noteholder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker.

(iv) Prior to the Closing Date, each Consenting Noteholder agrees with the Company not to, directly or indirectly, wholly or in part, (1) sell, assign, transfer, loan, hypothecate, pledge, permit the participation in, or otherwise dispose of, or offer or enter into any contract or arrangement with respect to any of the foregoing, of any ownership, economic or other interest in any of the Convertible Notes and/or Oasis Notes, as applicable, (2) deposit any interest in the Convertible Notes and/or Oasis Notes, as applicable, into a voting trust, (3) enter into any swap, option or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of any Convertible Notes and/or Oasis Notes, as applicable, or (4) grant any proxies or enter into a voting agreement (other than the Voting Agreements) with respect to any such Convertible Notes and/or Oasis Notes, as applicable (each, a "Transfer"), unless the transferee thereof either (I) is a Consenting Noteholder, (II) prior to such Transfer, agrees in writing for the benefit of the Company to be bound by all of the terms of this Agreement with respect to such Convertible Notes or Oasis Notes, as applicable, by executing a joinder (a "Joinder") reasonably acceptable, and delivering an executed copy thereof, to JAKKS, and Skadden, Arps, Slate, Meagher & Flom LLP (in accordance with the notice provisions set forth in Section 6.12), in which event the transferee shall become a Consenting Noteholder under this Agreement with respect to such transferred Convertible Notes and/or Oasis Notes, as applicable, or (III) is so bound pursuant to the Transactions. Each Consenting Noteholder agrees and acknowledges that any Transfer of Convertible Notes and/or Oasis Notes, as applicable, that does not comply with the terms and procedures set forth in this Section 3.05(a)(iv) shall be deemed null and void ab initio. Upon execution of a Joinder or by a transferee upon consummation of a Transfer, such Person shall be deemed to make all of the representations, warranties, and covenants of a Consenting Noteholder, as applicable, set forth in this Agreement.

(b) Sophistication and Experience. Such Consenting Noteholder (i) understands that the Transactions involve substantial risk, (ii) has the requisite knowledge and experience in financial and business matters, investments and transactions of the type contemplated by this Agreement and the Transactions such that it is capable of evaluating the merits and risks of entering into this Agreement and of making an informed investment decision with respect to the Transactions, (iii) has conducted an independent review and analysis of the business and affairs of the Company that it considers sufficient and reasonable for purposes of entering into this Agreement and the Transactions, including representing that such Consenting Noteholder is knowledgeable with respect to the Company and its condition (financial and otherwise), results of operations, businesses, properties, plans and prospects, was afforded the opportunity, together with its advisors, to conduct due diligence on the Company prior to execution of this Agreement, has received and reviewed, and/or consulted with its advisors with respect to, the Company's publicly available information and the other information provided by the Company upon request of such Consenting Noteholder and/or its advisors, and has had a reasonable opportunity to ask questions of the Company and its representatives, including with respect to such information, and the Company or its representatives have answered to the satisfaction of such Consenting Noteholder all inquiries that such Consenting Noteholder has put to the Company, (iv) has been afforded an opportunity to negotiate, either directly or through its advisors, the terms of such Consenting Noteholder's participation in, and has received and reviewed, either directly or through its advisors, sufficient information that such Consenting Noteholder, in its sole discretion, has deemed to be necessary or appropriate to make an informed decision on whether to participate in, the transactions contemplated by this Agreement and the transactions contemplated hereby and the terms of, and consequences of ownership of, the New Securities, as applicable, (v) understands that nothing in this Agreement or any other document contemplated hereby constitutes legal, tax, accounting, financial or investment advice, and such Consenting Noteholder has consulted such legal, tax, accounting, financial and investment advisors as it, in its sole discretion, has deemed to be necessary or appropriate, and (vi) certifies that, to the extent applicable, it is either (x) a "qualified institutional buyer," or QIB, as that term is defined in Rule 144A under the Securities Act or (y) an Accredited Investor.

(c) Restricted Securities.

(i) Each Consenting Convertible Noteholder understands that the New Securities have not been registered under the Securities Act or the securities laws of any U.S. state or other jurisdiction, and, therefore, the New Securities cannot be resold unless they are so registered or unless an exemption from registration is available. Each Consenting Convertible Noteholder further understands that it is not contemplated that any registration of the New Securities will be made under the Securities Act or any securities laws of any U.S. state or other jurisdiction and understands that the exemptions from registration afforded by Rule 144 ("Rule 144") and Rule 144A ("Rule 144A") (the provisions of which rules are known to it) depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts. The foregoing restrictions are referred to in this Agreement as the "Securities Law Restrictions." Such Consenting Convertible Noteholder understands that the New Securities will bear a legend reflecting the Securities Law Restrictions. Each Consenting Convertible Noteholder acknowledges and agrees that the purchase of New Securities by such applicable Consenting Noteholder has not been solicited by any form of general solicitation or general advertising.

(ii) Each Consenting Convertible Noteholder is acquiring the New Securities for its own account, not with a view toward the resale or distribution of such New Securities and such Consenting Convertible Noteholder has no present intention of Transferring or otherwise distributing such New Securities or any interest therein. Each Consenting Convertible Noteholder will not sell or otherwise Transfer any of the New Securities or any interest therein except in a registered transaction or in a transaction exempt from or not subject to the registration requirements of the Securities Act and any other applicable securities laws and in accordance with the legend reflecting the Securities Law Restrictions.

(d) Exclusivity of Representations. Each Consenting Noteholder specifically disclaims that it is relying, or has relied, upon any statement, advice (whether accounting, tax, financial, legal or other), representation or warranty made by JAKKS or any of its Subsidiaries, Affiliates or Representatives regarding the Transactions, except for (i) the representations and warranties expressly made by the Company Parties in this Agreement and any other Transaction Documents, and (ii) the disclosures made by JAKKS in the SEC Documents, subject to the forward looking statements, risk factors and any other qualifications therein and except to the extent expressly disclosed otherwise by the Company or its advisors to (y) the Consenting Convertible Noteholders or the Ad Hoc Group Advisors, and (z) the Consenting Oasis Noteholder or the Consenting Oasis Noteholder Advisor.

Section 3.06 Confidentiality. Each Consenting Noteholder hereby agrees with the Company that Confidential Information furnished to it has been made available in connection with the Transactions. Each Consenting Noteholder agrees with the Company that such Consenting Noteholder shall comply with the terms of any existing confidentiality agreement such Consenting Noteholder has entered into with the Company, solely to the extent and for so long as such confidentiality agreement remains in effect.

Section 3.07 Public Announcements. The Company hereby agrees to consult with, and consider in good faith any comments received from, the Consenting Noteholders before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and will not issue any such press release or make any such public statement identifying any of the Consenting Noteholders prior to receiving the written consent of such Consenting Noteholder(s) about whom such statement is made, which consent shall not be unreasonably withheld. On or before 4:30 p.m. New York time on the second (2^{nd}) Business Day following the date of this Agreement, JAKKS shall file with the SEC the Current Report on Form 8-K in such form as is reasonably acceptable to the Consenting Noteholders, describing the terms of the transactions contemplated by the Transaction Documents and attaching each of the Transaction Documents (in the case of the Voting Agreements, the form thereof) as exhibits to such filing. JAKKS shall provide a draft of any such press release relating to the Transactions to the Consenting Noteholders no later than one (1) full Business Day prior to the dissemination of such press release and shall provide a draft of such Form 8-K no later than one (1) full Business Day prior to filing such Form 8-K with the SEC.

Section 3.08 Pre-Closing Obligations. Until the Closing Date, and except with respect to any actions related to the Transactions or otherwise specifically contemplated under this Agreement, each Company Party agrees (severally and not jointly) to (a) use its reasonable best efforts to conduct, and cause its Subsidiaries to conduct, their businesses and operations only in the ordinary course in a manner that is consistent with past practices and in compliance with Law, and use reasonable best efforts to preserve intact in all material respects their business organization and relationships with third parties (including material creditors, lessors, licensors, suppliers, distributors and customers) and employees; and (b) not increase in any manner outside the ordinary course of business the compensation or benefits (including severance) of any director, officer or employee of the respective Company Party without the consent of Consenting Noteholders who collectively hold more than fifty percent (50.0%) of the aggregate principal amount of the Convertible Notes, such consent not to be unreasonably withheld, conditioned or delayed.

Section 3.09 Recusal. While the Consenting Oasis Noteholder or any of its Affiliates hold Amended and Restated Oasis Notes, any employee of the Consenting Oasis Noteholder or any of its Affiliates serving as a director on the Board shall recuse himself (or herself) from any discussion or vote relating to the terms of the Amended and Restated Oasis Notes.

Section 3.10 Independent Nature of Consenting Noteholders' Obligations and Rights. The obligations of each Consenting Noteholder under any Transaction Document are several and not joint with the obligations of any other Consenting Noteholder, and no Consenting Noteholder shall be responsible in any way for the performance of the obligations of any other Consenting Noteholder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Consenting Noteholder pursuant hereto or thereto, shall be deemed to constitute the Consenting Noteholders as, and the Company acknowledges that the Consenting Noteholders do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Consenting Noteholders are in any way acting in concert or as a group, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents and the Company acknowledges that the Consenting Noteholders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Company acknowledges, and each Consenting Noteholder confirms, that it has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. Each Consenting Noteholder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Consenting Noteholder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the transactions contemplated hereby and by the other Transaction Documents was solely in the control of the Company, not the action or decision of any Consenting Noteholder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Consenting Noteholder. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, and a Consenting Noteholder, solely, and not between the Company, and the Consenting Noteholders collectively and not between and among the Consenting Noteholders.

Section 3.11 Stockholder Approval. JAKKS shall: (a) file, no later than September 6, 2019, a preliminary proxy statement with the SEC for a special meeting of holders of Common Stock (such special meeting, as determined in accordance with the second proviso of this sentence, the "Stockholder Meeting"), soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions (such affirmative approval being referred to herein as the "Stockholder Approval") providing for (i) if so required by the rules and regulations of the Nasdaq Global Select Market (the "NASDAQ"), JAKKS' issuance of all of the shares of Common Stock issuable pursuant to the terms of the Amended and Restated Oasis Notes in accordance with applicable law and the rules and regulations of the NASDAQ without giving effect to the Exchange Cap provisions set forth in the Amended and Restated Oasis Notes, (ii) the Classified Board Proposal, and (iii) the election to the Board of any director nominee selected by the Nominating Committee in accordance with the Amended and Restated Nominating and Corporate Governance Committee Charter; (b) diligently attempt to resolve any comments received from the staff of the SEC relating to such preliminary proxy statement, and if appropriate file an amended preliminary proxy statement with the SEC, so that clearance of the preliminary proxy statement by the staff of the SEC may be obtained as promptly as possible, (c) subject to receiving SEC approval (or the absence of comments on the preliminary proxy statement from the staff of the SEC within ten (10) calendar days of filing), mail or otherwise disseminate to holders of record of Common Stock of JAKKS, no later than three (3) Business Days after September 30, 2019, a definitive proxy statement for the Stockholder Meeting (provided that if a definitive agreement is entered into by September 30, 2019 that would result in an Acceptable Transaction (as defined in the New Preferred Certificate of Designations), the mailing or dissemination of such definitive proxy statement may be deferred until the third (3rd) Business Day following the public announcement of such definitive agreement; (d) use reasonable best efforts to call and hold the Stockholder Meeting no later than October 31, 2019 or as promptly as practicable thereafter, subject to applicable notice requirements of SEC regulations, the New Bylaws and Delaware law; and (e) use its reasonable best efforts to solicit the Stockholder Approval and to cause the Board to recommend to holders of Common Stock that they approve such resolutions; *provided* that if, despite JAKKS' reasonable best efforts the Stockholder Approval for any such proposal is not obtained on or prior to December 31, 2019, JAKKS shall cause an additional meeting of stockholders to be held every six (6) months thereafter until such Stockholder Approval is obtained; *provided*, *however*, that, in lieu of presenting the proposal in clause (iii) at the Stockholder Meeting, such proposal may be presented at the following annual meeting. For the avoidance of doubt, the proposal in clause (i) shall be substantially in a form previously reviewed by the Consenting Oasis Noteholder and Schulte Roth & Zabel LLP and the proposals in clauses (ii) and (iii) shall be subject to the prior review and approval of the Consenting Convertible Noteholders and their legal counsel. As soon as practicable after the Closing Date, JAKKS shall submit to the NASDAQ a notification of listing of additional shares form for, and subject to receipt of any required approval of JAKKS stockholders as set forth in this Section 3.11 with respect to any shares of Common Stock issuable in excess of the Exchange Cap (as defined in the Amended and Restated Oasis Notes), the shares of Common Stock issuable pursuant to the terms of the Amended and Restated Oasis Notes to be approved for listing on the NASDAQ.

Section 3.12 New Common Equity. Each certificate representing shares of New Common Equity shall contain a legend substantially to the following effect (in addition to any legends required under applicable securities laws):

THIS SECURITY HAS BEEN ACQUIRED FOR INVESTMENT AND WITHOUT A VIEW TO DISTRIBUTION AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER STATE SECURITIES LAWS. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THIS SECURITY OR ANY INTEREST OR PARTICIPATION THEREIN MAY BE MADE EXCEPT (A) IN COMPLIANCE WITH THE PROVISIONS OF ANY VOTING AGREEMENT BETWEEN THE HOLDER HEREOF AND THE CORPORATION AND (B)(1) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AND, IN THE CASE OF CLAUSE (B), PROVIDED THAT THE CORPORATION, IF IT SO REQUESTS, RECEIVES AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE CORPORATION TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

Section 3.13 Registration Rights Agreement. JAKKS shall enter into the Consenting Convertible Noteholders Registration Rights Agreement with each holder of New Common Equity within thirty (30) days after the Closing Date.

Section 3.14 Withholding. All payments and distributions with respect to the shares of New Common Equity and New Preferred Equity and the First Lien Obligations shall be subject to withholding and backup withholding of tax to the extent required by law (and, in the case of the First Lien Obligations, as provided under the First Lien Credit Agreement, and, in the case of the New Preferred Equity, as provided under the New Preferred Certificate of Designations), and amounts withheld, if any, shall be treated as received by the holders of such shares or First Lien Obligations in respect of which such amounts are withheld. Notwithstanding anything to the contrary contained or implied in this Agreement or the New Preferred Certificate of Designations, the Parties hereto acknowledge and agree that, absent a change in applicable law, (a) the parties will treat the New Preferred Equity as not subject to the application of Section 305 of the Internal Revenue Code of 1986, as amended and (b) the Company shall not withhold any amounts with respect to the New Preferred Equity by reason of the application of Section 305 of the Internal Revenue Code of 1986, as amended. Each holder of New Common Equity, New Preferred Equity or First Lien Obligations will provide the Company with an applicable IRS Form W-9 or IRS Form W-8 establishing such holder's residency and, in the case of IRS Form W-8, any exemption from, or reduction in, U.S. federal withholding tax to which such holder is entitled.

Section 3.15 Additional Voting Agreements. Following the Closing, JAKKS shall continue to use commercially reasonable efforts to enter into additional Voting Agreements that, together with the Voting Agreements referred to in Section 3.04(i), collectively, cover more than fifty percent (50%) of the total outstanding Common Stock immediately after giving effect to the consummation of the Transactions.

ARTICLE 4

CONDITIONS

Section 4.01 Conditions to Obligations of the Parties. The obligations of the Parties to consummate the Closing are subject to the satisfaction (or, to the extent permitted under applicable Law, waiver in writing by each of the Parties) of the following conditions:

(a) no order, ruling or injunction shall have been entered by a court or other Governmental Authority that prohibits the consummation of the Closing ("Legal Restraint");

(b) each Party shall have performed in all material respects all of its obligations hereunder required to be performed by it prior to or contemporaneously with the Closing;

(c) no event occurring after the date of this Agreement that individually, or together with all other events occurring after the date of this Agreement, has had, or would reasonably be expected to have a Material Adverse Effect;

(d) the representations and warranties of the Parties shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) at and as of the Closing Date with the same effect as if made at and as of such date and after giving effect to the Transactions (except for such representations and warranties made as of a specified date, which shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) only as of the specified date);

(e) if the Closing Date is more than one (1) Business Day after the date of this Agreement, each Company Party shall have delivered a certificate duly executed by a senior officer of such Company Party, dated as of the Closing Date, that each of the representations and warranties of such Company Party are true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) at and as of the Closing Date with the same effect as if made at and as of such date after giving effect to the Transactions (except for such representations and warranties made as of a specified date, which shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) only as of the specified date);

(f) contemporaneously with the Closing, the parties thereto shall enter into the New Revolving Credit Facility and execute the New Revolving Credit Facility Credit Agreement;

(g) contemporaneously with the Closing, the parties thereto shall enter into and execute the New Intercreditor Agreement;

(h) contemporaneously with the Closing, JAKKS shall have received the New Money Investment;

(i) contemporaneously with the Closing, a cash amount representing the principal balance of, and accrued but unpaid interest under, the Existing Term Loan Facility shall be deposited with the Term Loan Agent, using, in part, the proceeds of the New Money Investment;

(j) contemporaneously with the Closing, the Existing Term Loan Facility shall be cancelled;

(k) contemporaneously with the Closing, the parties thereto shall enter into and execute the First Lien Credit Agreement;

(l) JAKKS shall have delivered to the Consenting Convertible Noteholders a legal opinion of counsel, subject to customary assumptions and qualifications, as to the due authorization and issuance of the New Securities under the Delaware General Corporation Law, a draft of which opinion has been furnished to Stroock & Stroock & Lavan LLP prior to the date of this Agreement;

(m) JAKKS shall have filed the New Preferred Certificate of Designations with the Secretary of State of the State of Delaware;

(n) the Voting Agreements referred to in Section 3.04(i) shall have been executed and delivered by JAKKS and the other parties thereto and shall have become effective;

(o) JAKKS shall have delivered a certificate of good standing dated within ten (10) days of the Closing Date to the Consenting Convertible Noteholders at Closing;

(p) each Consenting Convertible Noteholder shall have delivered or caused to be delivered, to be held in escrow, (i) to the Escrow Agent by wire transfer in accordance with Section 2.01(a)(i)(A) its respective amount of the New Money Investment, and (ii) to the Convertible Notes Trustee in accordance with Section 2.01(a)(i)(B) all of its Convertible Notes;

(q) Oasis shall have delivered to the Convertible Notes Trustee in accordance with Section 2.01(b)(ii) all of its Convertible Notes;

(r) contemporaneously with the Closing, the Convertible Notes delivered in accordance with Section 4.01(o) and Section 4.01(p) shall be cancelled;

(s) contemporaneously with the Closing, (x) each Consenting Noteholder shall have (i) executed and delivered each Governance Agreement to which such Consenting Noteholder is a party, and (ii) provided such Consenting Noteholder's approval, as applicable, of each Governance Agreement to which such Consenting Noteholder is not a party, and (y) each counterparty to the Governance Agreements shall have executed and delivered each Governance Agreement to which it is a party;

(t) contemporaneously with the Closing, the Company and the other parties thereto shall have entered into the Employment Agreement Acknowledgements;

(u) contemporaneously with the Closing, the parties to each other Transaction Document shall enter into and execute such other applicable Transaction Document;

(v) contemporaneously with the Closing, the New Securities shall be issued;

(w) contemporaneously with the Closing, the parties thereto shall enter into and execute the Amended and Restated Oasis Notes; and

(x) the Common Stock (I) shall be listed on the NASDAQ and (II) shall not have been suspended, as of the Closing Date, by the SEC or the NASDAQ from trading on the NASDAQ.

ARTICLE 5

TERMINATION

Section 5.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of (i) the Consenting Noteholders and (ii) JAKKS;

(b) by (i) (x) the Consenting Convertible Noteholders, or (y) the Consenting Oasis Noteholder, in each case, if the Closing has not occurred on or before August 12, 2019 (the "End Date"); or (ii) by Citadel Equity Fund Ltd. (solely as to itself) if the Closing has not occurred on or before the date that is five (5) Business Days after the End Date; provided that the right to terminate this Agreement pursuant to this Section shall not be available to any party whose breach of any provision of this Agreement has been a principal cause of the failure of the Closing to be consummated by such date;

(c) by any Party, if any Legal Restraint shall be in effect and shall have become final and nonappealable; provided that the right to terminate this Agreement pursuant to this Section shall not be available to any Party whose breach of any provision of this Agreement has been a principal cause of such Legal Restraint being or remaining in effect;

(d) by any Party, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of any other Party set forth in this Agreement shall have occurred that would cause any condition set forth in Section 4.01(b) or Section 4.01(d) with respect to the obligations, representations or warranties of such other Party not to be satisfied and such condition is incapable of being satisfied by the End Date or, if curable, is not cured by such other Party within 10 days of receipt by such other Party of written notice of such breach or failure (or such shorter period as remains between the date such written notice is provided and the End Date);

(e) by any of (i) the Consenting Convertible Noteholders, or (ii) the Consenting Oasis Noteholder if an Insolvency Proceeding is commenced by any of the Company Parties; or

(f) by any of (i) the Consenting Convertible Noteholders, or (ii) the Consenting Oasis Noteholder if an Insolvency Proceeding is commenced against any of the Company Parties and any of the following events occur: (a) such Company Party consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within thirty (30) calendar days of the date of the filing thereof, (d) an interim trustee, receiver, interim receiver, trustee or monitor is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Company Party, or (e) an order for relief shall have been issued or entered therein.

The Party desiring to terminate this Agreement pursuant to this Section 5.01 (other than pursuant to Section 5.01(a)) shall give written notice of such termination to the other Parties in accordance with Section 6.12.

Section 5.02 Effect of Termination. If this Agreement is terminated as permitted by Section 5.01, such termination shall be without liability of any Party or its Affiliates to any other Party; *provided* that any termination of this Agreement shall not relieve or release any Party from any liability arising out of (i) any willful and material failure of such Party to fulfill a condition to the performance of the obligations of another Party set forth in this Agreement, (ii) any willful and material failure by such Party to perform a covenant of this Agreement or (iii) any willful and material misrepresentation or breach with respect to any of the representations and warranties specifically made by such Party in this Agreement. The provisions of this Section 5.02 and Section 3.06 and Article 6 shall survive any termination hereof pursuant to Section 5.01, subject to Section 6.13 and Section 6.15.

ARTICLE 6

MISCELLANEOUS

Section 6.01 Amendments and Waivers.

(a) Any provision of this Agreement may be amended if, and only if, such amendment is in writing and is duly executed by each of the Parties hereto.

(b) Any provision of this Agreement may be waived if, and only if, such waiver is in writing and is duly executed by the Party against whom the waiver is to be effective.

(c) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

(d) Notwithstanding anything else in this Agreement to the contrary, any consent, writing, waiver or other agreement of (x) the Consenting Convertible Noteholders on or prior to the Closing Date shall be deemed to have been provided hereunder upon the consent, writing, waiver or other agreement of the Consenting Convertible Noteholders who, as of the date of any such consent, writing, waiver, or other agreement, collectively hold more than ninety-percent (90.0%) of the aggregate principal amount of Convertible Notes held by the Consenting Convertible Noteholders as of the date of this Agreement, (y) the Consenting Convertible Noteholders following the Closing Date shall be deemed to have been provided hereunder upon the consent, writing, waiver or other agreement of those parties who have executed this Agreement as Consenting Convertible Noteholders and who, as of the date of any such consent, writing, waiver or other agreement, collectively hold at least sixty-six and two-thirds percent (66.67%) of the shares of New Preferred Equity held by such parties as of such date, and (z) the Consenting Oasis Noteholder shall be deemed to have been provided hereunder upon the consent, writing, waiver or other agreement of the Consenting Oasis Noteholder who, as of the date of this Agreement, collectively hold more than fifty-percent (50%) of the aggregate principal amount of Oasis Notes.

Section 6.02 Entire Agreement. This Agreement, including all other agreements referenced herein, and schedules and exhibits hereto, constitutes the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to such subject matter.

Section 6.03 Expenses. At the Closing, JAKKS will pay (i) the fees and costs incurred by the Ad Hoc Group Advisors in connection with their representation of certain of the Consenting Convertible Noteholders in the Transactions, and (ii) the fees and costs incurred by the Consenting Oasis Noteholder Advisor in connection with its representation of the Consenting Oasis Noteholder in the Transactions. From and after the Closing, JAKKS will pay the legal fees and costs incurred by the Consenting Convertible Noteholders in connection with any post-closing obligations of the Consenting Convertible Noteholders or the Company contemplated by this Agreement.

Section 6.04 Survival. The representations, warranties, covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing.

Section 6.05 Third Party Beneficiaries. No provision of this Agreement is intended to confer upon any Person other than the Parties and their respective heirs, legal and personal representatives, successors and permitted assigns any right, remedies, benefits, obligations or liabilities.

Section 6.06 Successors and Assigns. Other than as set forth in Section 6.13 and Section 6.14, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors and permitted assigns; provided that the Company may not assign, transfer or in any manner convey (including by merger, asset sale or otherwise) all or any part of its rights or obligations under this Agreement to any other Person, without the prior written consent of the Consenting Noteholders.

Section 6.07 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby so long as this Agreement as so modified continues to express, without material change, the original intentions of the Parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the Parties or the practical realization of the benefits that would otherwise be conferred upon the Parties, and (b) the Parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.08 Specific Performance. The Parties recognize that irreparable injury may result from a breach of any provision of this Agreement and that money damages may be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party to this Agreement who may be injured (in addition to any other rights and remedies that may be available to such Person under this Agreement, any other agreement or under any law) shall be entitled to seek (without posting a bond or other security) one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

Section 6.09 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to its conflict of laws principles.

Section 6.10 Jurisdiction and Venue. The Parties agree that (subject to the last sentence of this Section 6.10) any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions shall be brought in the United States District Court for the Southern District of New York or, if such court is unavailable, in any New York State court sitting in the Borough of Manhattan of the City of New York, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that he, she or it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 6.12 shall be deemed effective service of process on such Party. Notwithstanding the foregoing, the Parties agree that any dispute, suit, action or proceeding relating to any rights with respect to the New Securities may be brought before the Court of Chancery of the State of Delaware (or, if the federal courts have exclusive jurisdiction over the matter, the United States District Court for the District of Delaware).

Section 6.11 Waiver of Jury Trial. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

Section 6.12 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile with receipt confirmed, by electronic mail (*provided* that, in the case of electronic mail, either receipt of such electronic mail is acknowledged by the applicable recipient or a confirmatory hardcopy is sent without undue delay by an internationally recognized courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses:

(a) if to the Company and/or any of the Company Parties:

c/o JAKKS Pacific, Inc.
2951 28th Street
Santa Monica, California 90405
Attention: Brent Novak
Facsimile: (424) 286-9655
E-mail: bnovak@jakks.net

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, California 90071
Attention: Brian J. McCarthy
Van C. Durrer II
Facsimile: (213) 621-5070
(213) 621-5200
Email: brian.mccarthy@skadden.com
van.durrer@skadden.com

(b) if to the Consenting Convertible Noteholders: as indicated on such Consenting Convertible Noteholder's signature page hereto.

with a copy (which shall not constitute notice) to:

c/o Stroock & Stroock & Lavan LLP
2029 Century Park East
Los Angeles, California 90067
Attention: Frank A. Merola
Facsimile: (310) 556-5959
Email: fmerola@stroock.com

and

c/o Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Attention: Jeffrey Lowenthal
Facsimile: (212) 806-6006
Email: jlowenthal@stroock.com

(c) if to the Consenting Oasis Noteholder:

c/o Oasis Legal
Oasis Management (Hong Kong) LLC
21st Floor, Man Yee Building
68 Des Voeux Road Central
Central, Hong Kong
Attention: General Counsel
Email: OasisLegal@oasiscm.com
ashoghi@us.oasiscm.com

with a copy (which shall not constitute notice) to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Eleazer N. Klein
Facsimile: (212) 593-5955
Email: eleazer.klein@srz.com

All notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 6.13 Waiver. Notwithstanding anything to the contrary set forth in this Agreement and irrespective of whether the Closing occurs, except as provided for in Section 6.08 and Section 6.15, each Party hereby expressly waives any and all remedies and claims whether in law or in equity (whether based upon contract, tort or otherwise), that such Person may have against any other Party and such Party's Affiliates (individually or collectively) with respect to any Damages suffered in connection with this Agreement or the Transactions or any oral representation made or alleged to be made in connection herewith. Except as provided for in Section 6.08 and Section 6.15, and irrespective of whether the Closing occurs, each Party hereby irrevocably and unconditionally releases, acquits, waives and forever discharges each other Party and such Party's Affiliates and their respective current and former principals, officers, directors, managers, employees, agents, attorneys, successors, assigns, indemnitees and representatives of any kind, from and against any and all remedies, actions, causes of action, suits, proceedings, executions, judgments, duties, debts, dues, accounts, bonds, contracts, covenants and claims whether in law or in equity (whether based upon contract, tort or otherwise) pending on, or asserted after, the date hereof, in each case with respect to (i) any and all Damages arising out of or in connection with this Agreement or the transactions contemplated hereby or any oral representation made or alleged to be made in connection herewith whether or not relating to liabilities, claims or Damages pending on, or asserted after, the date hereof, and (ii) any cause, matter or thing relating to JAKKS or any of its current or former Subsidiaries or any actions taken or failed to be taken by any Party in any capacity related to JAKKS or any of its current or former Subsidiaries occurring or arising on or prior to the date hereof; *provided* that the foregoing shall not affect the Parties' rights and obligations (i) under all agreements existing as of the date hereof by and among the Parties which relate to JAKKS, through the Closing (to the extent the Closing occurs), and (ii) under all agreements by and among the Parties which relate to JAKKS to be entered into at the Closing.

Section 6.14 No Recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the Persons that are expressly named as Parties hereto and then only with respect to the specific obligations set forth herein with respect to such Party. Except as provided in the immediately preceding sentence, no past, present or future principal, officer, director, manager, employee, incorporator, manager, member, general or limited partner, stockholder, equityholder, controlling person, Affiliate, agent, attorney or other representative of any party hereto or any of their successors or permitted assigns or any direct or indirect principal, officer, director, manager, employee, incorporator, manager, member, general or limited partner, stockholder, equityholder, controlling person, Affiliate, agent, attorney, representative, successor or permitted assign of any of the foregoing (each, a "Non-Recourse Party"), shall have any liability for any obligations or liabilities of any Party hereto under this Agreement or for any claim or action (whether in tort, contract or otherwise) based on, in respect of or by reason of the transactions contemplated hereby or in respect of any written or oral representations made or alleged to be made in connection herewith. Without limiting the rights of any Party to this Agreement against any other Party hereto, in no event shall any Party make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Non-Recourse Party.

Section 6.15 Releases. Upon Closing, each of the Parties, on behalf of itself and its successors or assigns (collectively, the "Releasing Parties"), in consideration of the Consenting Convertible Noteholders' and Consenting Oasis Noteholder's execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, unconditionally, freely, voluntarily and, after consultation with counsel and becoming fully and adequately informed as to the relevant facts, circumstances and consequences, releases, waives and forever discharges (and further agrees not to allege, claim or pursue) any and all claims, rights, causes of action, counterclaims or defense of any kind whatsoever, in contract, in tort, in law or in equity, whether known or unknown, fixed or contingent, direct or indirect, joint and/or several, secured or unsecured, due or not due, liquidated or unliquidated, asserted or unasserted, or foreseen or unforeseen, which any of the Releasing Parties might otherwise have or may have against any of the other Releasing Parties and their predecessors, successors and assigns, Affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, stockholders (and any fund managers, fiduciaries or other agents of stockholders with any involvement related to JAKKS), members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and such persons' respective heirs, executors, estates, servants and nominees (any of the foregoing, a "Related Party," and collectively, the "Releasees") in each case on account of any conduct, condition, act, omission, event, contract, liability, obligation, demand, covenant, promise, indebtedness, claim, right, cause of action, suit, damage, defense, judgment, circumstance or matter of any kind whatsoever which existed, arose or occurred at any time prior to the date of this Agreement relating to the New Common Equity, the New Preferred Equity, the Notes, this Agreement and/or the transactions contemplated thereby or hereby (any of the foregoing, a "Claim" and collectively, the "Claims"); *provided; however*, that nothing in this Agreement, including, without limitation, in Section 6.13 and this Section 6.15, shall operate to waive or release (i) any Claim arising from or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct, gross negligence or a criminal act, or (ii) any obligations of any party under this Agreement or any other Transaction Document or under any other document or instrument executed in connection with the transactions contemplated by this Agreement or any other Transaction Documents. Each of the Releasing Parties expressly acknowledges and agrees, with respect to the Claims released pursuant to this Section 6.15, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights and benefits conferred by any applicable U.S. federal or state law, or any principle of U.S. common law, including Section 1542 of the California Civil Code, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 6.15. Furthermore, each of the Releasing Parties hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released and/or discharged by the Releasing Parties pursuant to this Section 6.15.

Section 6.16 Counterparts. This Agreement may be signed in any number of counterparts (including via facsimile or other electronic method), each of which shall be deemed to be an original, with the same effect as if the signatures were upon the same instrument.

[*Remainder of this page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JAKKS PACIFIC, INC.

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President, Chief Executive Officer and Secretary

[Signature Page to Transaction Agreement]

COMPANY PARTIES:

DISGUISE, INC.

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

JAKKS SALES LLC

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MAUI, INC.

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MOOSE MOUNTAIN MARKETING, INC.

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

KIDS ONLY, INC.

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

AXAR CAPITAL MANAGEMENT, LP, as
beneficial owner of certain client accounts holding Convertible Notes

By: /s/ *Andrew Axelrod*
Name: Andrew Axelrod
Title: Authorized Signatory

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $20,248,000

Consenting Noteholder Contact
Address: Axar Capital Management LP
1330 Avenue of the Americas, 30th Floor
New York, NY 10019
Attention: Ricardo Mosquera
Telephone: (212) 356-6137
Facsimile: (212) 956-3127
E-mail: rmosquera@axarcapital.com

DTC Participant/Broker Contact
Address: Goldman Sachs
200 W Street 6th Floor
New York, NY 10282
Attention: Daniel B. Aree-Yee
Telephone: (212) 357-8169
Facsimile: [●]
E-mail: Daniel.Aree-Yee@gs.com
Broker DTC Participant #: GS/0005

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

BSP SPECIAL SITUATIONS MASTER A L.P.,
as a Noteholder

By: /s/ *Bryan Martoken*
Name: Bryan Martoken
Title: Chief Financial Officer

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $19,865,000

Consenting Noteholder Contact
Address: Benefit Street Partners LLC
399 Boylston St, Suite 901
Boston, MA 02116
Attention: Marlon Thompson
Telephone: (212) 623-6544
Facsimile: [●]
E-mail: M.Thompson@benefitstreetpartners.com;
moconfirm@benefitstreetpartners.com

DTC Participant/Broker Contact
Address: J.P. Morgan Clearing Corp
383 Madison Avenue, 4th Floor
New York, NY 10179
Attention: Rachael Ranieri
Telephone: (212) 623-6544
Facsimile: [●]
E-mail: Rachael.c.ranieri@jpmorgan.com;
pbmo_benefitstreet@jpmorgan.com
Broker DTC Participant #: DTC 352, Agent ID 94012, Institutional ID 94012, Account # 10247954

CONSENTING CONVERTIBLE NOTEHOLDERS:

MOAB PARTNERS, L.P., as a Noteholder

By: /s/ *Chad Goldstein*
Name: Chad Goldstein
Title: Chief Financial Officer / Chief Compliance

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $31,062,000

Consenting Noteholder Contact
Address: Moab Capital Partners, LLC
152 West 57th Street, 9th Floor
New York NY 10019
Attention: Chad Goldstein CFO/COO
Telephone: (212) 981-2623
Facsimile: (212) 651-1289
E-mail: cg@moabpartners.com

DTC Participant/Broker Contact
Address: JP Morgan
383 Madison Avenue, 4th Floor
New York, NY 10179
Attention: Kwame Agyeman
Telephone: (347) 643-2592
Facsimile: [●]
E-mail: Americas.pbmo.ii@jpmorgan.com
Broker DTC Participant #: DTC 352

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

UBS O'Connor, LLC on behalf of:
NINETEEN77 GLOBAL MULTI-STRATEGY ALPHA MASTER LIMITED, as a Noteholder

By: /s/ *Jeff Richmond*
Name: Jeff Richmond
Title: Executive Director

By: /s/ *James DelMedico*
Name: James DelMedico
Title: Executive Director

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $21,270,000

Consenting Noteholder Contact
Address: UBS O'Connor LLC
1 North Wacker Drive, 32nd Floor
Chicago, IL 60606
Attention: Jeff R. Richmond
Telephone: (312) 525-5839
Facsimile: (312) 525-6271
E-mail: Jeff. Richmond@ubs.com

DTC Participant/Broker Contact
Address: Citi Investor Services
390 Greenwich Street, 6th Floor
New York, NY 10013
Attention: Jay Aaronson
Telephone: (212) 723-5690
Facsimile: [●]
E-mail: Jay.Aaronson@citi.com
Broker DTC Participant #: DTC 505

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CONSENTING CONVERTIBLE NOTEHOLDERS:

CITADEL EQUITY FUND LTD., as a Noteholder
BY: CITADEL ADVISORS LLC, ITS PORTFOLIO MANAGER

By: /s/ *Christopher Ramsay*
Name: Christopher Ramsay
Title: Authorized Signatory

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $3,500,000

Consenting Noteholder Contact
Address: 131 S Dearborn Street, 32nd Floor
Chicago, IL 60603
Attention: Kevin Newstead
Telephone: (312) 395-4887
Facsimile: (312) 395-7300
E-mail: kevin.newstead@citadel.com

DTC Participant/Broker Contact
Address: BOFA Securities, Inc.
222 Broadway, 11th Floor
New York, NY 10038
Attention: Halima Dayton
Telephone: (312) 992-2398
Facsimile: (212) 553-2086
E-mail: Halima.Dayton@bofa.com
Broker DTC Participant #: DTC 5198

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

CONCISE SHORT TERM HIGH YIELD MASTER FUND SPC, as a Noteholder

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Title: Principal

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $1,882,000

Consenting Noteholder Contact
Address: Concise Capital Management, LP
1111 Brickell Avenue, Suite 1525
Miami, FL 33131
Attention: Thomas Krasner
Telephone: (305) 371-4578
Facsimile: (305) 503-8839
E-mail: Trade@concisecapital.com

DTC Participant/Broker Contact
Address: Cowen Prime Services LLC
599 Lexington Avenue, 27th Floor
New York, NY 10022
Attention: Christopher Luppino
Telephone: (646) 562-1679
Facsimile: [●]
E-mail: operations@cowenprime.com;
Christopher.Luppino@cowen.com
Broker DTC Participant #: DTC 443

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

MERCER QIF FUND PLC – MERCER INVESTMENT FUND I, as a Noteholder

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Title: Principal

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $3,588,000

Consenting Noteholder Contact
Address: Concise Capital Management, LP
1111 Brickell Avenue, Suite 1525
Miami, FL 33131
Attention: Thomas Krasner
Telephone: (305) 371-4578
Facsimile: (305) 503-8839
E-mail: Trade@concisecapital.com

DTC Participant/Broker Contact
Address: State Street
1776 Heritage Drive
Quincy, Ma 02171
Attention: Melissa Curlanis
Telephone: (617) 985-3289
Facsimile: [●]
E-mail: SSC_AMS24_INC@StateStreet.com
mkcurlanis@statestreet.com
Broker DTC Participant #: DTC 997

CONSENTING CONVERTIBLE NOTEHOLDERS:

THE SARATOGA ADVANTAGE TRUST –
JAMES ALPHA HEDGED HIGH INCOME PORTFOLIO, as a Noteholder

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Title: Principal

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $337,000

Consenting Noteholder Contact
Address: Concise Capital Management, LP
1111 Brickell Avenue, Suite 1525
Miami, FL 33131
Attention: Thomas Krasner
Telephone: (305) 371-4578
Facsimile: (305) 503-8839
E-mail: Trade@concisecapital.com

DTC Participant/Broker Contact
Address: Bank of New York
2 Hanson Place, 7th Floor
Brooklyn, NY 11217
Attention: Bernard Poelker
Telephone: (718) 315-3624
Facsimile: [●]
E-mail: bernard.poelker@bnymellon.com;
GeminiNE-Custody@ultimusfundsolutions.com
Broker DTC Participant #: DTC 901

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

CONCISE SHORT TERM HIGH YIELD FUND, as a Noteholder

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Title: Principal

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $1,825,000

Consenting Noteholder Contact
Address: Concise Capital Management, LP
1111 Brickell Avenue, Suite 1525,
Miami, FL 33131
Attention: Thomas Krasner
Telephone: (305) 371-4578
Facsimile: (305) 503-8839
E-mail: Trade@concisecapital.com

DTC Participant/Broker Contact
Address: JP Morgan
4 Chase Metrotech Center, 6th Floor
Brooklyn, NY 11245
Attention: Stephen Tamayo
Telephone: (718) 242-5628
Facsimile: [●]
E-mail: Stephen.v.tamayo@jpmorgan.com;
custody.mo.red@jpmorgan.com
Broker DTC Participant #: DTC 902

[Signature Page to Transaction Agreement]

CONSENTING CONVERTIBLE NOTEHOLDERS:

THE BEEBEE FOUNDATION,
as a Noteholder

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Title: Principal

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $268,000

Consenting Noteholder Contact
Address: Concise Capital Management, LP
1111 Brickell Avenue, Suite 1525,
Miami, FL 33131
Attention: Thomas Krasner
Telephone: (305) 371-4578
Facsimile: (305) 503-8839
E-mail: Trade@concisecapital.com

DTC Participant/Broker Contact
Address: Northern Trust
801 South Canal
Chicago, IL 60607
Attention: Carmen Lopez
Telephone: (312) 557-7739
Facsimile: [●]
E-mail: IMLG_National_Team@ntrs.com;
cl26@ntrs.com
Broker DTC Participant #: DTC 2669

[Signature Page to Transaction Agreement]

CONSENTING OASIS NOTEHOLDER:

OASIS INVESTMENTS II MASTER FUND LTD.

By: /s/ *Phillip Meyer*
Name: Phillip Meyer
Title: Director

Aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $7,250,000

Total accrued but unpaid interest on aggregate principal amount of Convertible Notes issued pursuant to Rule 144A (CUSIP No. 47012EAG1) held on the date hereof: $66,760.42

Aggregate principal amount of 2017 Oasis Notes issued pursuant to Rule 144A (CUSIP No. AP9531629) held on the date hereof: $21,550,000

Aggregate principal amount of 2018 Oasis Notes issued pursuant to Rule 144A (CUSIP No. AT7867597) held on the date hereof: $8,000,000

Total accrued but unpaid interest on aggregate principal amount of Oasis Notes held on the date hereof: $261,435.42

Consenting Noteholder Contact
Address: c/o Oasis Legal
Oasis Management (Hong Kong)
21st Floor, Man Yee Building, 68 Des Voeux Road, Central, Hong Kong
Attention: General Counsel
Telephone: (852) 2847 7708
E-mail: OasisLegal@oasiscm.com &
ashoghi@us.oasiscm.com

DTC Participant/Broker Contact
Address:

Attention:
Telephone:
Facsimile:
E-mail:
Broker DTC Participant #: 5208

[Signature Page to Transaction Agreement]

AMENDED AND RESTATED CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent,

THE LENDERS THAT ARE PARTIES HERETO

as the Lenders,

and

JAKKS PACIFIC, INC.,
DISGUISE, INC.,
JAKKS SALES LLC,
MAUI, INC.,
MOOSE MOUNTAIN MARKETING, INC., and
KIDS ONLY, INC.,

as Borrowers

Dated as of August 9, 2019

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EXHIBITS AND SCHEDULES

AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT, is entered into as of August 9, 2019 by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), JAKKS PACIFIC, INC., a Delaware corporation ("JAKKS"), the Subsidiaries of JAKKS identified on the signature pages hereof as "Borrowers", and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J-1 (each, a "Borrower" and individually and collectively, jointly and severally, the "Borrowers").

WHEREAS, Borrowers, Agent and certain Lenders are party to that certain Credit Agreement, dated as of March 27, 2014 (the "Original Closing Date") (as heretofore amended, modified or otherwise supplemented, the "Original Credit Agreement"); and

WHEREAS, the parties to the Original Credit Agreement desire to amend and restate the Original Credit Agreement in its entirety pursuant to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1. **Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"2020 Convertible Notes" means the 4.875% convertible senior notes due June 1, 2020 issued by JAKKS to Regions Bank pursuant to the 2020 Convertible Notes Indenture in an aggregate principal amount not to exceed $1,905,000 after giving effect to the transactions to occur on the Closing Date.

"2020 Convertible Notes Indenture" means that certain Indenture dated June 9, 2014, between JAKKS and Regions Bank, as trustee (as successor trustee to Wells Fargo Bank, National Association), pursuant to which JAKKS issued the 2020 Convertible Notes, as in effect on the Closing Date.

"2023 Oasis Convertible Notes" (i) the $21.5 million principal amount convertible senior note, issued on November 7, 2017 and amended and restated on August 9, 2019, (ii) the $8.5 million principal amount convertible senior note, issued on July 26, 2018 and amended and restated on August 9, 2019, and (ii) the $8.0 million principal amount convertible senior note, issued on August 9, 2019, each issued by JAKKS to Oasis Investments II Master Fund Ltd.

"A.S. Design Limited" means A.S. Design Limited, a company incorporated in Hong Kong with registered number 453139.

"Acceptable Appraisal" means, with respect to an appraisal of Inventory, the most recent appraisal of such property received by Agent (a) from an appraisal company reasonably satisfactory to Agent and (b) the scope and methodology (including, to the extent relevant, any sampling procedure employed by such appraisal company) of which are reasonably satisfactory to Agent, in each case, in Agent's Permitted Discretion.

"Account" means an account (as that term is defined in the Code).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Account Party" has the meaning specified therefor in Section 2.11(h) of this Agreement.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Administrative Borrower" has the meaning specified therefor in Section 17.13 of this Agreement.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that for purposes of the definition of Eligible Accounts and Section 6.10 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

"Agent's Liens" means the Liens granted by each Loan Party to Agent under the Loan Documents and securing the Obligations.

"Agreement" means this Amended and Restated Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Margin" means, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, as applicable, the applicable margin set forth in the following table that corresponds to the Fixed Charge Coverage Ratio of Borrowers for the most recently completed month for which financial statements have been delivered pursuant to Section 5.1; provided, that for the period from the Closing Date through and including the date on which financial statements are delivered pursuant to Section 5.1 for the fiscal month ended September 30, 2019, the Applicable Margin shall be set at the margin in the row styled "Level III"; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Margin shall be set at the margin in the row styled "Level III":

Level	**Fixed Charge Coverage Ratio**	**Applicable Margin for Base Rate Loans which are Revolving Loans (the "Revolving Loan Base Rate Margin")**	**Applicable Margin for LIBOR Rate Loans which are Revolving Loans (the "Revolving Loan LIBOR Rate Margin")**
I	If the Fixed Charge Coverage Ratio is > 1.25 to 1.00	0.50 percentage points	1.50 percentage points
II	If the Fixed Charge Coverage Ratio is ≥ 1.00 to 1.00 but ≤ 1.25 to 1.00	0.75 percentage points	1.75 percentage points
III	If the Fixed Charge Coverage Ratio is < 1.00 to 1.00	1.00 percentage points	2.00 percentage points

The Applicable Margin shall be re-determined as of the first day of each month.

"Applicable Unused Line Fee Percentage" means, as of any date of determination, the applicable percentage set forth in the following table that corresponds to the Average Revolver Usage of Borrowers for the most recently completed quarter as determined by Agent in its Permitted Discretion; provided, that for the period from the Closing Date through and including September 30, 2019, the Applicable Unused Line Fee Percentage shall be set at the rate in the row styled "Level II"; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Unused Line Fee Percentage shall be set at the margin in the row styled "Level II":

Level	Average Revolver Usage	Applicable Unused Line Fee Percentage
I	≥ 50% of the Maximum Revolver Amount	0.25%
II	< 50% of the Maximum Revolver Amount	0.375%

The Applicable Unused Line Fee Percentage shall be re-determined on the first date of each quarter by Agent.

"Application Event" means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(iii) of this Agreement.

"Arbor Toys Company Limited" means Arbor Toys Company Limited, a company incorporated in Hong Kong with registered number 1011343.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement.

"Authorized Person" means any one of the individuals identified on Schedule A-2 to this Agreement (as such schedule may be updated from time to time by written notice from Administrative Borrower to Agent), or any other individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Availability" means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of this Agreement (after giving effect to the then outstanding Revolver Usage).

"Average Revolver Usage" means, with respect to any period, the sum of the aggregate amount of Revolver Usage for each day in such period (calculated as of the end of each respective day) *divided by* the number of days in such period.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party or any of its Subsidiaries by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party or any of its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent and the applicable Bank Product Provider) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent and the applicable Bank Product Provider as sufficient to satisfy the reasonably estimated credit exposure, operational risk or processing risk with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by each Loan Party and its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Loan Party or its Subsidiaries.

"Bank Product Provider" means Wells Fargo or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider.

"Bank Product Provider Agreement" means an agreement in substantially the form attached hereto as Exhibit B-2 to this Agreement, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, the applicable Loan Parties, and Agent.

"Bank Product Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate to establish (based upon the Bank Product Providers' determination of the liabilities and obligations of each Loan Party and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Base Rate" means the greatest of (a) the Federal Funds Rate *plus* ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis), *plus* one percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Base Rate Loan" means each portion of the Revolving Loans that bears interest at a rate determined by reference to the Base Rate.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulations.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which any Loan Party or any of its Subsidiaries or ERISA Affiliates has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers or other governing body) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers or other governing body).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of an Extraordinary Advance.

"Borrowing Base" means, as of any date of determination, the result of:

(a) 85% of the amount of Eligible Accounts, *less* the amount, if any, of the Dilution Reserve, *plus*

(b) the lesser of (i) the product of 85% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Inventory at such time, and (ii) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Inventory, multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Inventory (such determination may be made as to different categories of Eligible Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, *plus*

(c) 85% of the book value of JAKKS HK's Eligible Accounts, subject to an acceptable credit review by Agent in its Permitted Discretion of the Account Debtors of JAKKS HK, in an aggregate amount not to exceed the lesser of (i) $20,000,000 and (ii) 35% of the total Borrowing Base as of such date, *plus*

(d) the lesser of (i) unrestricted cash of a Borrower held in a segregated restricted Deposit Account maintained in the United States with Agent as security for the Obligations, and in which Agent has a first priority perfected security interest and which is subject to a Control Agreement, which shall also provide that no Loan Party can withdraw funds from such Deposit Account without the consent of Agent and (ii) $15,000,000, *less*

(e) the aggregate amount of Reserves, if any, established by Agent from time to time in its Permitted Discretion under Section 2.1(c) of this Agreement.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit B-1 to this Agreement, which such form of Borrowing Base Certificate may be amended, restated, supplemented or otherwise modified from time to time (including without limitation changes to the format thereof), as approved by Agent in Agent's sole discretion.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of New York (and in respect of any HK Loan Party, Hong Kong), except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" means, with respect to any Person for any period, the amount of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) expenditures made during such period in connection with the replacement, substitution, or restoration of assets or properties pursuant to Section 2.4(e)(ii) of this Agreement or that are properly charged to current operations, (b) with respect to the purchase price of assets that are purchased within 90 days of the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, (c) expenditures during such period that, pursuant to a written agreement, are reimbursed by a third Person (excluding any Borrower or any of its Affiliates), and (d) expenditures for fixed or capital assets relating to leasehold improvements for which such Person has been reimbursed in cash or receives a credit from the applicable landlord.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than $1,000,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or of any recognized securities dealer having combined capital and surplus of not less than $1,000,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC) in which any Loan Party is a "United States shareholder" within the meaning of Section 951(b) of the IRC.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means that:

(a) any Person or two or more Persons acting in concert, shall have acquired beneficial ownership, directly or indirectly, of Equity Interests of Administrative Borrower (or other securities convertible into such Equity Interests) representing 35% or more of the combined voting power of all Equity Interests of Administrative Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Administrative Borrower,

(b) any Person or two or more Persons acting in concert, shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Administrative Borrower or control over the Equity Interests of such Person entitled to vote for members of the Board of Directors of Administrative Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such Person or group has the right to acquire pursuant to any option right) representing 30% or more of the combined voting power of such Equity Interests,

(c) during any period of 24 consecutive months commencing on or after the Closing Date, the occurrence of a change in the composition of the Board of Directors of Administrative Borrower such that a majority of the members of such Board of Directors are not Continuing Directors,

(d) Borrowers fail to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party (other than pursuant to a transaction not prohibited by Section 6.3 or Section 6.4),

(e) the occurrence of a "Change in Control" as defined in the Term Loan Credit Agreement,

(f) the occurrence of any "Fundamental Change" as defined in the 2020 Convertible Notes Indenture, or

(g) the occurrence of any "Fundamental Change" as defined in the 2023 Oasis Convertible Notes.

"Closing Date" means the date of the making of the initial Revolving Loan (or other extension of credit) under this Agreement (which is August 9, 2019).

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Loan Party's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collections" means, all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds and tax refunds).

"Commitment" means, with respect to each Lender, its Revolver Commitment and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to this Agreement delivered by the chief financial officer or treasurer of Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Administrative Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Copyright Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Covenant Testing Period" means a period (a) commencing on the last day of the fiscal month of Borrowers most recently ended prior to a Covenant Trigger Event for which Borrowers are required to deliver to Agent monthly, quarterly or annual financial statements pursuant to Schedule 5.1 to this Agreement, and (b) continuing through and including the first day after such Covenant Trigger Event that Availability has equaled or exceeded the greater of (i) 15% of the Maximum Revolver Amount, and (ii) $9,000,000 for 30 consecutive days.

"Covenant Trigger Event" means if at any time Availability is less than the greater of (i) 15% of the Maximum Revolver Amount, and (ii) $9,000,000.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Administrative Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, Issuing Bank, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified any Borrower, Agent or Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Agent or Administrative Borrower, to confirm in writing to Agent and Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Administrative Borrower, Issuing Bank, and each Lender.

"Defaulting Lender Rate" means (a) for the first three days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Revolving Loan Base Rate Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Account of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to this Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve (12) months (or such other period as may be determined by Agent acting in its Permitted Discretion), that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by the extent to which Dilution is in excess of 5%.

"Disguise Limited" means Disguise Limited, a company incorporated in Hong Kong with registered number 1287686.

"Disney Entities" means, (a) as of the Closing Date, Disney Consumer Products, Inc. and/or any one or more of its Affiliates, including, without limitation, including Disney Enterprises, Inc., Disney Consumer Products Latin America, Inc., Disney Interactive, Inc., Disney Children's Book Group, LLC, Disney Licensed Publishing, Disney Publishing Worldwide, Inc., Walt Disney Company Limited, Walt Disney Company (Asia Pacific) Limited, Walt Disney Company (Australia) Pty Ltd., Walt Disney Company (Australia) Limited, Walt Disney Music Company, Walt Disney Music Company/Wonderland Music Company, Inc., Walt Disney Music Company/Wonderland Music Company, Inc./Five Hundred South Songs and Seven Peaks Music, Walt Disney Records (a division of ABC, Inc.), Marvel Characters, Inc., Marvel Enterprises Inc., Marvel Characters B.V., Spider-Man Merchandising L.P. and Lucasfilm Ltd. and (b) from time to time, such additional Persons affiliated with the Persons listed in clause (a) that enter into a license agreement or similar arrangement with the Loan Parties.

"Disney License" means each license agreement between any Loan Party and any Disney Entity.

"Disqualified Equity Interests" means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) matures (other than as a result of the optional redemption by the issuer thereof) or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) require the scheduled payments of dividends in cash (other than to the extent solely paid in Qualified Equity Interests), or (d) are or become convertible into or exchangeable (other than at the option of the issuer thereof) for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date. Notwithstanding anything to the contrary contained herein, the Preferred Stock shall not constitute Disqualified Equity Interests.

"Dollars" or "$" means United States dollars.

"Domestic Subsidiary" means any Subsidiary of any Loan Party that is not a Foreign Subsidiary.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

"EBITDA" means, with respect to any fiscal period and with respect to Borrowers determined, in each case, on a consolidated basis in accordance with GAAP:

(a) the consolidated net income (or loss),

minus

(b) without duplication, the sum of the following amounts for such period to the extent included in determining consolidated net income (or loss) for such period:

(i) unusual or non-recurring, and

(ii) interest income,

plus

(c) without duplication, the sum of the following amounts for such period to the extent deducted in determining consolidated net income (or loss) for such period:

(i) non-cash unusual and non-recurring losses,

(ii) Interest Expense,

(iii) income taxes,

(iv) depreciation and amortization,

(v) transaction fees and expenses incurred in connection with the consummation of this Agreement, and

(vi) any non-cash loss (or minus any gain) from foreign currency translation.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" means those Accounts created by a Loan Party in the ordinary course of its business, that arise out of such Loan Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion and in accordance with Section 2.1(c) to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date; provided, that any reduction in eligibility resulting from any such revision shall not be duplicative of any reduction in availability resulting from the imposition of any Reserve hereunder. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

(a) (i) with respect to Accounts that have selling terms of 30 days or less, such Accounts that are not paid within the earlier of (x) 60 days following their respective due dates or (y) 90 days following their respective original invoice dates or (ii) with respect to Accounts that have selling terms in excess of 30 days and equal to or less than 90 days, such Accounts that are not paid within the earlier of (x) 30 day following their respective due dates or (y) 120 days following their respective original invoice dates,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with selling terms of more than 90 days,

(d) Accounts with respect to which the Account Debtor is an Affiliate of any Loan Party or an employee or agent of any Loan Party or any Affiliate of any Loan Party,

(e) Accounts (i) arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional, or (ii) with respect to which the payment terms are "C.O.D.", cash on delivery or other similar terms,

(f) Accounts that are not payable in Dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or Canada or any state or province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and, if requested by Agent, is directly drawable by Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States or (ii) any state of the United States or any other Governmental Authority (exclusive, however, of Accounts with respect to which the applicable Loan Party has complied with the Assignment of Claims Act, 31 USC §3727 or any applicable state law restricting the assignment thereof with respect to such obligation),

(i) Accounts with respect to which the Account Debtor is a creditor of a Loan Party, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) [reserved],

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which any Loan Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition; provided, that Agent shall endeavor to provide written notice to Administrative Borrower in accordance with Section 2.1(c) of any such determination of ineligibility,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Loan Party of the subject contract for goods or services, or (ii) that represent credit card sales,

(q) Accounts to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates as of any date of determination exceed (i) with respect to each of Walmart and Target, thirty-five percent (35%) of all Eligible Accounts, and (ii) with respect to all other Account Debtors, twenty-five percent (25%) of all Eligible Accounts,

(r) Accounts that are subject to any right, claim, Lien or other interest of any other Person, other than Liens in favor of Agent, securing the Obligations,

(s) (i) Accounts (other than those owing by QVC) that arise with respect to goods that are placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is conditional and, (ii) with respect to Accounts owing by QVC, to the extent the payment of such Accounts is conditional,

(t) Accounts that are evidenced by a judgment, Instrument or Chattel Paper,

(u) Accounts that do not arise from the sale of goods or the performance of services by a Loan Party in the ordinary course of business, including sales of Equipment and bulk sales, or

(v) Accounts arising from or in connection with contracts or projects that are subject to a performance or surety bond.

"Eligible Inventory" means Inventory of a Loan Party, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion and in accordance with Section 2.1(c) to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed or received by (or on behalf of) Agent from time to time after the Closing Date; provided, that any reduction in eligibility resulting from any such revision shall not be duplicative of any reduction in availability resulting from the imposition of any Reserve hereunder. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Loan Parties' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Loan Party does not have good, valid, and marketable title thereto,

(b) a Loan Party does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Loan Party),

(c) it is not located at one of the locations in the continental United States set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14) (or in-transit from one such location to another such location),

(d) it is stored at any location if the aggregate value of Inventory at such location is less than $100,000,

(e) it is in-transit to or from a location of a Loan Party (other than in-transit from one location set forth on Schedule 4.25 to this Agreement to another location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14)),

(f) it is located on real property leased by a Loan Party or in a contract warehouse or with a bailee, in each case, unless either (i) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and it is separately identifiable from goods of others, if any, stored on the premises, or (ii) Agent has established a Landlord Reserve with respect to such location,

(g) it is the subject of a bill of lading or other document of title,

(h) it is not subject to a valid and perfected first priority Agent's Lien (except for Liens described in clause (g) of the definition of "Permitted Liens"),

(i) it consists of goods returned or rejected by a Loan Party's customers,

(j) it consists of goods that are obsolete, slow moving, damaged, unsaleable or shopworn, work-in-process, raw materials, or goods that constitute spare parts, packaging and shipping materials, manufacturing supplies, or display items, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,

(k) it is subject to third party intellectual property, licensing or other proprietary rights, unless Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite such third party rights,

(l) Inventory that consists of tooling or replacement parts,

(m) Inventory that consists of any costs associated with "freight in" charges in excess of normal freight charges,

(n) Inventory that consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available,

(o) Inventory that is not covered by casualty insurance reasonably acceptable to Agent,

(p) Inventory that is covered by a negotiable document of title, unless such document is delivered to Agent with all necessary endorsements, free and clear of all Liens except (x) Liens in favor of Agent and (y) in accordance and subject to the Intercreditor Agreement, a second lien security interest in favor of the Term Loan Agent, or

(q) Inventory that is not of a type held for sale in the ordinary course of business of a Loan Party.

"Employee Benefit Plan" means an "employee benefit plan" within the meaning of Section 3(3) of ERISA which any Loan Party establishes for the benefit of its employees or for which any Loan Party has liability to make a contribution, including by reason of being an ERISA Affiliate.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Interests" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act). Notwithstanding anything to the contrary contained herein, the 2020 Convertible Notes and 2023 Oasis Convertible Notes shall not be deemed to be Equity Interests.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of such Loan Party or its Subsidiaries under IRC Section 414(o).

"ERISA Lien" means any Lien in an aggregate amount exceeding $1,000,000 imposed by or under, or arising in connection with, or resulting from, Title IV of ERISA or Section 303 of ERISA (or related sections) or any corresponding provision of the IRC (including Section 430(k) of the IRC.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes and any franchise taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office or applicable lending office is located in or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), (ii) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Loan Party), except that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, treaty, order or other decision or other Change in Law with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

"Existing Letters of Credit" means those letters of credit described on Schedule E-1 to this Agreement.

"Extraordinary Advances" has the meaning specified therefor in Section 2.3(d)(iii) of this Agreement.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate *per annum* equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means that certain fee letter, dated as of even date with this Agreement, among Administrative Borrower and Agent, in form and substance reasonably satisfactory to Agent.

"Fixed Charges" means, with respect to any fiscal period and with respect to Borrowers determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Interest Expense required to be paid (other than interest paid-in-kind, amortization of financing fees, costs associated with obtaining, or breakage costs in respect of, Hedge Agreements and other non-cash Interest Expense) during such period, net of interest income, (b) scheduled principal payments in respect of Indebtedness (to the extent described in clauses (a), (b), (c), (d) or (e) of the definition of "Indebtedness" and guarantees in respect of obligations of the type described in clauses (a), (b), (c), (d) or (e) of the definition of "Indebtedness") that are required to be paid in cash during such period, and (c) all federal, state, and local income taxes required to be paid in cash during such period and (d) all Restricted Payments paid in cash or other assets during such period; provided, that for any measurement period ending on or prior to June 30, 2020, Fixed Charges shall be annualized by multiplying the Fixed Charges for the period commencing on the Closing Date and ending on the last day of such measurement period by a fraction, the numerator of which is 365 and the denominator of which is the number of days in the period from the Closing Date to the last day of such measurement period.

"Fixed Charge Coverage Ratio" means, with respect to any fiscal period and with respect to Borrowers determined on a consolidated basis in accordance with GAAP, the ratio of (a) EBITDA for such period ***minus*** Unfinanced Capital Expenditures made (to the extent not already incurred in a prior period) or incurred during such period, to (b) Fixed Charges for such period (but excluding from Fixed Charges the repurchase or repayment of the 2020 Convertible Notes on the Closing Date).

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Foreign Collateral Document" means each HK Collateral Document and each other Collateral Document entered into or delivered by any Non-US Loan Party.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary" means (x) any direct or indirect subsidiary of any Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia and (y) any direct or indirect subsidiary of any Loan Party all (other than an immaterial amount) the assets of which (directly or through one or more entities treated as partnerships or disregarded entities for U.S. federal income Tax purposes) constitute equity interests in, or Indebtedness of, one or more CFCs other than Protected CFCs.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of this Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guaranties all or a portion of the Obligations, including any Person that is a "Guarantor" under the Guaranty and Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with this Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each of the Loan Parties to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of each Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means Wells Fargo or any of its Affiliates.

"HK Collateral Documents" means the HK Security Debenture, the HK Share Charge, the HK Security Trust and all documents delivered to Agent or any Lender in connection with any of the foregoing, as each such document may be amended, restated, supplemented or otherwise modified from time to time.

"HK Loan Parties" means Loan Parties incorporated or otherwise registered at the Hong Kong Companies Registry or Loan Parties otherwise having a place of business in Hong Kong.

"HK Security Debenture" means the Debenture dated as of June 14, 2018, made by HK Loan Parties in favor of Agent for the benefit of itself and the Lenders in respect of all the assets and undertaking of HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"HK Security Trust" means the Security Trust dated as of June 14, 2018, made by HK Loan Parties in favor of Agent for the benefit of itself and the Lenders in respect of Collateral granted by HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"HK Share Charge" means the Share Charge dated as of June 14, 2018, made by JAKKS, JAKKS Hong Kong and JAKKS Pacific (Asia) Limited in favor of Agent for the benefit of itself and the Lenders in respect of all the issued shares in the HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"Increased Reporting Event" means if at any time Availability is less than the greater of (a) 15% of the Maximum Revolver Amount, and (b) $9,000,000.

"Increased Reporting Period" means the period commencing after the continuance of an Increased Reporting Event and continuing until the date when no Increased Reporting Event has occurred for 30 consecutive days.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed (but limited in the case of obligations that are non-recourse (other than with respect to such asset), to the lesser of the fair market value of such assets and the outstanding principal amount of the Indebtedness secured thereby), (e) all obligations of such Person to pay the deferred purchase price of assets (other than (i) trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices and (ii) royalty payments payable in the ordinary course of business in respect of non-exclusive licenses) and any earn-out or similar obligations, (f) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) the face amount of any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, (ii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation and (iii) "Indebtedness" shall exclude the portion of any earn-out or other contingent consideration that are not yet required to be reflected as a liability on the balance sheet of the applicable Person in accordance with GAAP.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date with this Agreement, executed and delivered by each Loan Party and each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of even date with this Agreement, between Agent and Term Loan Agent, and as acknowledged by the Loan Parties party thereto, as in effect on the Closing Date.

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrowers for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 1, 3, or 6 months thereafter; provided, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 3 or 6 months after the date on which the Interest Period began, as applicable, and (d) Borrowers may not elect an Interest Period which will end after the Maturity Date.

"Inventory" means inventory (as that term is defined in the Code).

"Inventory Reserves" means, as of any date of determination, (a) Landlord Reserves in respect of Inventory, and (b) those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory or the Maximum Revolver Amount, including based on the results of appraisals.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business in an aggregate amount not to exceed $500,000 per fiscal year, and (b) *bona fide* accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment ***plus*** the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit pursuant to Section 2.11 of this Agreement, and Issuing Bank shall be a Lender.

"JAKKS" has the meaning specified therefor in the preamble to this Agreement.

"JAKKS Canada" means JAKKS Pacific (Canada), Inc., a company organized under the laws of the province of New Brunswick, Canada.

"JAKKS HK" is a collective reference to each of JAKKS Hong Kong, JAKKS Pacific (Asia) Limited, Moose Mountain Toymakers Limited, Disguise Limited, A.S. Design Limited, Arbor Toys Company Limited, Kids Only, Limited and Tollytots Limited.

"JAKKS Hong Kong" means JAKKS Pacific (H.K.) Limited, a company incorporated in Hong Kong with registered number 468246.

"JAKKS Pacific (Asia) Limited" means JAKKS Pacific (Asia) Limited, a company incorporated in Hong Kong with registered number 971208.

"Joinder" means a joinder agreement substantially in the form of Exhibit J-1 to this Agreement.

"JV Entities" means each of Pacific Animation Partners, LLC, DreamPlay Toys, LLC, DreamPlay, LLC, JAKKS Pacific Trading Limited, JAKKS Meisheng Trading (Shanghai) Limited, and JAKKS Meisheng Animation (H.K.) Limited, in each case, so long as each such Person is prohibited by applicable Requirement of Law or contractual obligation (including any restriction in any joint venture agreements) from guaranteeing or granting Liens to secure any of the Obligations or with respect to which any consent, approval, license or authorization from any Governmental Authority or third party (other than a Borrower or Subsidiary thereof) would be required for the provision of any such guaranty.

"Kids Only, Limited" means Kids Only, Limited, a company incorporated in Hong Kong with registered number 455075.

"Landlord Reserve" means, as to each location at which a Borrower has Inventory or books and records located and as to which a Collateral Access Agreement has not been received by Agent, a reserve in an amount equal to 3 months' rent, storage charges, fees or other amounts under the lease or other applicable agreement relative to such location or, if greater and Agent so elects, the number of months' rent, storage charges, fess or other amounts for which the landlord, bailee, warehouseman or other property owner will have, under applicable law, a Lien in the Inventory of such Borrower to secure the payment of such amounts under the lease or other applicable agreement relative to such location.

"Lender" has the meaning set forth in the preamble to this Agreement, shall include Issuing Bank and the Swing Lender, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including Issuing Bank and the Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group in accordance with the terms hereof, (b) reasonable and documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any reasonable and documented out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable and documented out-of-pocket costs and expenses paid or incurred by the Lender Group to enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 5.7(c) of this Agreement, (h) Agent's and Lenders' reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party, (i) Agent's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable and documented out-of-pocket costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including reasonable and documented out-of-pocket attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral; provided, that the fees and expenses of counsel that shall constitute Lender Group Expenses shall in any event be limited to one primary counsel to Agent and the Lenders, taken as a whole, one local counsel to Agent in each reasonably necessary jurisdiction, one specialty counsel to Agent in each reasonably necessary specialty area including insolvency law, and solely in the case of an actual or perceived conflict of interest, where the Lender affected by such conflict informs the Administrative Borrower of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Lenders (but excluding, in all cases, the allocated costs of in-house or internal counsel to Agent or any Lender).

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit (as that term is defined in the Code) issued by Issuing Bank.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.11(k) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 105% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit or otherwise causing such Letters of Credit to be returned to Issuing Bank, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Bank pursuant to a Letter of Credit.

"Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's participation in the Letter of Credit Usage pursuant to Section 2.11(e) on such date.

"Letter of Credit Fee" has the meaning specified therefor in Section 2.6(b) of this Agreement.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Sublimit" means $35,000,000.

"Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, *plus* (b) the aggregate amount of outstanding reimbursement obligations with respect to Letters of Credit which remain unreimbursed or which have not been paid through a Revolving Loan.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of this Agreement.

"LIBOR Notice" means a written notice in the form of Exhibit L-1 to this Agreement.

"LIBOR Option" has the meaning specified therefor in Section 2.12(a) of this Agreement.

"LIBOR Rate" means the rate *per annum* as published by ICE Benchmark Administration Limited (or any successor page or other commercially available source as the Agent may designate from time to time) as of 11:00 a.m., London time, two Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrowers in accordance with this Agreement (and, if any such published rate is below zero, then the LIBOR Rate shall be deemed to be zero). Each determination of the LIBOR Rate shall be made by the Agent and shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means each portion of a Revolving Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"License Agreement Guaranty" means a guaranty by any Loan Party of the obligations of any other Loan Party or any of its Subsidiaries owing to a licensor under an intellectual property licensing agreement between such Loan Party or Subsidiary and such licensors.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidity" means, as of any date of determination, the sum of Availability and Qualified Cash.

"Loan" means any Revolving Loan, Swing Loan or Extraordinary Advance made (or to be made) hereunder.

"Loan Account" has the meaning specified therefor in Section 2.9 of this Agreement.

"Loan Documents" means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Guaranty and Security Agreement, the Intercompany Subordination Agreement, the Intercreditor Agreement, any Issuer Documents, the Letters of Credit, any Mortgages, the Patent Security Agreement, the Trademark Security Agreement, the HK Collateral Documents, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement (including any security agreements, pledge agreements, collateral documents or similar documents) entered into or delivered, now or in the future, by any Loan Party and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

"Loan Party" means any Borrower or any Guarantor.

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on, or material impairment of, (a) the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Loan Parties and their Subsidiaries, taken as a whole, (b) the Loan Parties' ability to perform their obligations under the Loan Documents to which they are parties, (c) the legality, validity or enforceability against the Loan Parties (taken as a whole) of the Loan Documents, (d) the Lender Group's rights and remedies under the Loan Documents, or ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent), or (e) a material impairment of the enforceability or priority of Agent's Liens with respect to all or a material portion of the Collateral.

"Material Contract" means (a) each license agreement, customer contract or other arrangement that generates or otherwise contributes to, individually, more than 10% of the Borrowers' consolidated revenues during any fiscal quarter and (b) any and all other contracts or other arrangements to which any Loan Party or any of its Subsidiaries is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Material Environmental Liability" means Environmental Liabilities exceeding $500,000 in the aggregate at any time.

"Maturity Date" means the earlier of (i) August 9, 2022 and (ii) 180 days prior to the earliest stated maturity date of the 2023 Oasis Convertible Notes or the Term Loan Indebtedness.

"Maximum Revolver Amount" means $60,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) of this Agreement.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Moose Mountain Toymakers Limited" means Moose Mountain Toymakers Limited, a company incorporated in Hong Kong with registered number 540751.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by any Loan Party or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Loan Party or such Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on the asset subject to such sale or disposition (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents, (B) the Term Loan Indebtedness, and (C) Indebtedness assumed by the purchaser of such asset) which is required by the terms of such Indebtedness to be, and is, prepaid or repaid in connection with such sale or disposition (but only to the extent of the mandatory repayment), (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such sale or disposition, (iii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, and (iv) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (iv) are (x) deposited into escrow with a third party escrow agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of Agent, and (y) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.4(e) of this Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries, or the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such issuance or incurrence, and (ii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Recovery Percentage" means, as of any date of determination, the percentage of the book value of Borrowers' Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent Acceptable Appraisal of Inventory.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

"Non-US Loan Party" means a Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia.

"Notes Documents" means the 2020 Convertible Notes Indenture, the 2023 Oasis Convertible Notes, and all documents, instruments and agreements executed or delivered in connection therewith.

"Obligations" means (a) all loans (including the Revolving Loans (inclusive of Extraordinary Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations; provided that, anything to the contrary contained in the foregoing notwithstanding, the Obligations shall exclude any Excluded Swap Obligation. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans, (ii) interest accrued on the Revolving Loans, (iii) the amount necessary to reimburse Issuing Bank for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, fees (including fronting fees) and charges, (v) Lender Group Expenses, (vi) fees payable under this Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document, in each case in accordance with the provisions of the Loan Documents. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Original Closing Date" has the meaning specified therefor in the WHEREAS clauses to this Agreement.

"Original Credit Agreement" has the meaning specified therefor in the WHEREAS clauses to this Agreement.

"Original Revolving Loans" has the meaning specified therefor in Section 2.1(a).

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Other Connection Taxes" means with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court, excise, value added, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any Other Connection Taxes that are imposed with respect to an assignment by a Lender after the date hereof, other than an assignment pursuant to a request by Borrowers, or during an Event of Default set forth in Section 8.1, 8.4 and 8.5.

"Outstanding Original Revolving Loan Balance" has the meaning specified therefor in Section 2.1(a).

"Overadvance" means, as of any date of determination, that the Revolver Usage is greater than any of the limitations set forth in Section 2.1 or Section 2.11 of this Agreement.

"Parent" has the meaning specified therefor in the preamble to this Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning set forth in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"Payment Conditions" means, with respect to any proposed action on any date, conditions that are satisfied if:

(a) no Default or Event of Default then exists or would arise as a result of the consummation of such proposed action,

(b) the Fixed Charge Coverage Ratio of the Loan Parties and their Subsidiaries is equal to or greater than 1.10:1.00 for the trailing 12 month period most recently ended for which financial statements are required to have been delivered to Agent pursuant to Schedule 5.1 to this Agreement (calculated on a *pro forma* basis as if such proposed payment is a Fixed Charge made on the last day of such 12 month period (it being understood that such proposed payment shall also be a Fixed Charge made on the last day of such 12 month period for purposes of calculating the Fixed Charge Coverage Ratio under this clause (ii) for any subsequent proposed payment to fund such proposed transaction)),

(c) after giving effect to such proposed action, Liquidity shall be at least $25,000,000,

(d) Availability, (x) at all times during the 30 consecutive days immediately preceding the date of consummation of such proposed action, calculated on a *pro forma* basis as if such proposed action was made, and the proposed action was consummated, on the first day of such period, and (y) after giving effect to such proposed action, in each case, is not less than 17.5% of the Maximum Revolver Amount, and

(e) Administrative Borrower has delivered a certificate to Agent certifying that all conditions described in clauses (a), (b), (c) and (d) above have been satisfied.

"Perfection Certificate" means a certificate substantially in the form of Exhibit P-1 to this Agreement.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business and leases or subleases of Real Property not useful in the conduct of the business of the Loan Parties and their Subsidiaries,

(b) sales of Inventory to buyers in the ordinary course of business and dispositions of Inventory that are comprised of goods which are defective,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case without recourse, of accounts receivable (other than Eligible Accounts) arising in the ordinary course of business, but only in connection with the compromise or collection thereof,

(g) any involuntary loss, damage or destruction of property,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets of any Loan Party or its Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Administrative Borrower,

(k) (i) the lapse of registered or applied-for patents, trademarks, copyrights and other intellectual property of any Loan Party or any of its Subsidiaries, or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights (and applications therefor) (in each case under clauses (i) and (ii)) to the extent such intellectual property is not material to the business of the Loan Parties and such lapse and/or abandonment is not materially adverse to the interests of the Lender Group,

(l) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement,

(m) the making of Permitted Investments and Permitted Intercompany Investments,

(n) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, sales, transfers or other dispositions of assets (i) from any Loan Party or any of its Subsidiaries to a US Loan Party, (ii) from any Non-US Loan Party to any Non-US Loan Party and (iii) from any Subsidiary of any Loan Party that is not a Loan Party to any other Subsidiary of any Loan Party, and

(o) dispositions (other than of any Equity Interests of any Loan Party or any Subsidiary thereof or any Accounts of any Loan Party) not otherwise permitted hereunder which are made for fair market value so long as Borrowers make any mandatory prepayment in the amount of the Net Cash Proceeds of such disposition if and to the extent required by Section 2.4(e)(ii); provided, that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition, (ii) not less than 90% of the aggregate sales price from such disposition shall be paid in cash, (iii) the aggregate fair market value of all assets so sold by Loan Parties and their Subsidiaries, together, shall not exceed in any Fiscal Year $1,000,000 and (iv) after giving effect to such disposition, Loan Parties are in compliance on a pro forma basis with the financial covenants set forth in Section 7,

provided, that if, as of any date of determination, sales or dispositions by the Loan Parties during the period of time from the first day of the month in which such date of determination occurs until such date of determination, involve assets included in the Borrowing Base (other than sales of Inventory in the ordinary course of business), then Borrowers shall have, prior to consummation of the sale or disposition that causes the assets included in the Borrowing that are disposed of during such period, delivered to Agent an updated Borrowing Base Certificate that reflects the removal of the applicable assets from the Borrowing Base.

"Permitted Indebtedness" means:

(a) Indebtedness in respect of the Obligations,

(b) Indebtedness as of the Closing Date set forth on Schedule 4.14 to this Agreement and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,

(d) Indebtedness arising in connection with the endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness,

(f) unsecured Indebtedness of Administrative Borrower owing to current or former employees, officers or directors of Administrative Borrower or any of its Subsidiaries (or any spouses, ex-spouses, estates, trusts, heirs or other beneficiaries of any of the foregoing) incurred in connection with the repurchase by Administrative Borrower of Equity Interests of Administrative Borrower that have been issued to such Persons, so long as (i) no Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness and (ii) the aggregate principal amount of all such Indebtedness outstanding at any one time does not exceed $100,000,

(g) the Term Loan Indebtedness in an amount not to exceed the Maximum Term Amount (as defined in the Intercreditor Agreement),

(h) Permitted Surety Bonds,

(i) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(j) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that is incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's or such Subsidiary's operations and not for speculative purposes,

(k) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), or Cash Management Services,

(l) (i) 401(k) deferrals and matches that are paid within 30 days of the applicable payroll withholding date and (ii) other unsecured Indebtedness incurred in connection with deferred compensation or similar plan provisions to the employees, officers or directors of any Loan Party or any of their respective Subsidiaries not to exceed $500,000 in the aggregate in any fiscal year,

(m) contingent obligations with respect to Indebtedness of any Loan Party or any of their respective Subsidiaries to the extent that the party that is obligated under such contingent obligations could have incurred such underlying Indebtedness under Section 6.1,

(n) Indebtedness comprising Permitted Investments (including Permitted Intercompany Investments),

(o) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business,

(p) Indebtedness (other than Permitted Intercompany Investments) in an aggregate outstanding principal amount not to exceed $500,000 at any time outstanding for all Subsidiaries of the Loan Parties that are not Loan Parties; provided, that such Indebtedness is not directly or indirectly recourse to any of the Loan Parties or of their respective assets,

(q) [reserved],

(r) [reserved],

(s) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness,

(t) Subordinated Indebtedness; provided, that, interest, premiums or fees (other than customary fees payable to any agent or trustee thereunder) on such Subordinated Indebtedness shall only be permitted to be paid "in kind" and shall not be payable or paid in cash without the prior written consent of the Required Lenders, and no such Subordinated Indebtedness shall have a weighted average life to maturity shorter than that of the Term Loan Facility,

(u) the 2020 Convertible Notes (as in effect on the Closing Date and as modified in accordance with this Agreement),

(v) the 2023 Oasis Convertible Notes (as in effect on the Closing Date and as modified in accordance with this Agreement), and

(w) Indebtedness arising under (i) the factoring agreements with Standard Chartered Bank with respect to Accounts owing from Wal-Mart to any of the HK Loan Parties, and (ii) the factoring agreements with Wells Fargo Bank, N.A., Hong Kong Branch with respect to Accounts owing from Target to any of the HK Loan Parties.

"Permitted Intercompany Investments" means (x) Investments made by (a) a US Loan Party to another US Loan Party, (b) a Non-US Loan Party to another Loan Party, (c) a Subsidiary of a Loan Party that is not a Loan Party to another Subsidiary of a Loan Party that is not a Loan Party, (d) a Subsidiary of a Loan Party that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement and (e) a US Loan Party to a Non-US Loan Party, so long as (i) the aggregate amount of all such loans incurred under this clause (d) (irrespective of whether incurred by one or multiple borrowers) does not exceed $5,000,000 outstanding at any one time and (ii) at the time of the making of such loan, no Event of Default has occurred and is continuing or would result therefrom and (y) intercompany balances in the ordinary course of business consistent with past practices in connection with the transfer pricing system of the Loan Parties and their Subsidiaries.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents,

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(c) advances made in connection with purchases of goods or services or to customers or distributors, and prepaid expenses, in each case, in the ordinary course of business,

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries,

(e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to this Agreement,

(f) guarantees permitted under the definition of Permitted Indebtedness,

(g) Permitted Intercompany Investments,

(h) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,

(i) deposits of cash made in the ordinary course of business to secure performance of operating leases,

(j) (i) non-cash loans and advances to employees, officers, and directors of a Loan Party or any of its Subsidiaries for the purpose of purchasing Equity Interests in Administrative Borrower so long as the proceeds of such loans are used in their entirety to purchase such Equity Interests in Administrative Borrower, and (ii) loans and advances to employees and officers of a Loan Party or any of its Subsidiaries in the ordinary course of business for any other business purpose in an aggregate amount not to exceed $1,000,000 at any one time outstanding,

(k) the formation of new Subsidiaries (subject to compliance with Section 5.11 hereof),

(l) Investments consisting of extensions of credit in the nature of accounts receivable arising from the grant of trade credit in the ordinary course of business,

(m) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to obligations permitted under clause (j) of the definition of Permitted Indebtedness,

(n) equity Investments by any Loan Party in any Subsidiary of such Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law, and

(o) Investments received as the non-cash portion of consideration received in connection with transactions permitted pursuant to clause (o) of the definition of "Permitted Dispositions".

"Permitted Liens" means:

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations,

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests and the aggregate liabilities secured by such Liens do not exceed $500,000,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of this Agreement,

(d) Liens set forth on Schedule P-2 to this Agreement; provided, that any such Lien shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,

(e) the interests of lessors or sublessors under any lease not prohibited by this Agreement and non-exclusive licensors under license agreements not prohibited by this Agreement,

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof,

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,

(h) Liens on cash amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with worker's compensation, unemployment insurance or other social security legislation,

(i) Liens on amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with the making or entering into of bids, tenders, statutory obligations, trade contracts, governmental contracts, leases and other similar obligations in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure any Borrower's and its Subsidiaries reimbursement obligations with respect to surety, stay or customs and appeal bonds or performance and return of money bonds obtained in the ordinary course of business,

(k) with respect to any Real Property, easements, rights of way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges and encumbrances and minor title deficiencies on or with respect to such Real Property, in each case, that do not materially detract from the value of such Real Property or materially interfere with or impair the use or operation thereof,

(l) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,

(n) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business,

(o) Liens granted on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(q) to the extent constituting a grant of a Lien, Permitted Dispositions,

(r) Liens securing the Term Loan Indebtedness (as in effect on the date of this Agreement and as modified in accordance with this Agreement and the Intercreditor Agreement, so long as those liens are subject to the terms of the Intercreditor Agreement),

(s) [reserved],

(t) Liens arising under (i) the factoring agreements with Standard Chartered Bank with respect to Accounts owing from Wal-Mart to any of the HK Loan Parties, and (ii) the factoring agreements with Wells Fargo Bank, N.A., Hong Kong Branch with respect to Accounts owing from Target to any of the HK Loan Parties, in each case so long as such Liens are limited to such Accounts and the Proceeds thereof,

(u) Liens on leased property evidenced by precautionary UCC financing statements with respect to any true lease permitted by this Agreement, and

(v) non-exclusive licenses and sublicenses granted by a Loan Party and leases or subleases (by a Loan Party as lessor or sublessor) to third parties in the ordinary course of business.

For the avoidance of doubt, notwithstanding anything to the contrary herein, in no event shall any ERISA Lien be a Permitted Lien.

"Permitted Protest" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP and (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 30 days after, the acquisition, construction or improvement of any assets for the purpose of financing or refinancing all or any part of the purchase price or cost of such acquisition, construction or improvement, in an aggregate principal amount outstanding at any one time not in excess of $1,000,000.

"Permitted Surety Bonds" means unsecured guaranties and reimbursement obligations incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guaranty and similar obligations in an aggregate amount not to exceed $100,000 at any time outstanding.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Preferred Stock" means preferred stock of JAKKS, par value $0.001 per share, designated as Series A Senior Preferred Stock and issued pursuant to the Preferred Stock Certificate of Designation on the Closing Date, in each case, on the terms set forth in the Preferred Stock Certificate of Designation.

"Preferred Stock Certificate of Designation" means the Certificate of Designation of the Series A Senior Preferred Stock of Jakks Pacific, Inc., as in effect on the Closing Date.

"Projections" means Borrowers' forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Borrowers' historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make all or a portion of the Revolving Loans, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolver Commitments or the Revolving Loans, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders,

(b) with respect to a Lender's obligation to participate in the Letters of Credit, with respect to such Lender's obligation to reimburse Issuing Bank, and with respect to such Lender's right to receive payments of Letter of Credit Fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, that if all of the Revolving Loans have been repaid in full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders, and

(c) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of this Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1; provided, that if all of the Loans have been repaid in full and all Commitments have been terminated, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders.

"Property" means any interest in any kind of property or asset (other than cash), whether real, personal or mixed, and whether tangible or intangible.

"Protected CFC" means, with respect to any CFC, a CFC having only "United States shareholders" that are (i) "domestic corporations" (within the meaning Code Section 7701(a)(30)) classified as "C" corporations for all purposes of the Code (ii) eligible for and can actually take (without any loss or reduction of a material tax benefit) (x) the dividends received deduction under Section 245A of the Code with respect to any and all dividends actually received from such CFC and (y) a complete offset and reduction pursuant to Treasury Regulations Section 1.956-1(a)(2) against any and all inclusions under Sections 951(a)(1)(B) and 956 of the Code pursuant to Treasury Regulations Section 1.956 1.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of this Agreement.

"Public Lender" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties and their Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

"Qualified Equity Interests" means and refers to any Equity Interests issued by Administrative Borrower (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Real Property Collateral" means (a) the Real Property identified on Schedule R-1 to this Agreement, and (b) any fee-owned Real Property hereafter acquired by any Loan Party or one of its Subsidiaries with a fair market value in excess of $500,000.

"Receivable Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including Landlord Reserves for books and records locations and reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Revolver Amount.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Reference Period" has the meaning set forth in the definition of EBITDA.

"Refinancing Indebtedness" means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the final stated maturity or the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness,

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended,

(e) if the Indebtedness that is refinanced, renewed or extended was unsecured, such refinancing, renewal or extension shall be unsecured, and

(f) if the Indebtedness that is refinanced, renewed, or extended was secured (i) such refinancing, renewal, or extension shall be secured by substantially the same or less collateral as secured such refinanced, renewed or extended Indebtedness on terms no less favorable to Agent or the Lender Group, (ii) the Liens securing such refinancing, renewal or extension shall not have a priority more senior than the Liens securing such Indebtedness that is refinanced, renewed or extended and (iii) to the extent the Liens securing the Indebtedness being so refinanced, refunded, renewed or extended were subordinated to any Liens securing the Obligations, the Liens securing the Indebtedness incurred in connection with such refinancing, renewal or extension shall be subordinated at least to the same extent and in any event on terms no less favorable to Agent or the Lender Group.

"Register" has the meaning set forth in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of this Agreement.

"Related Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the aggregate Revolving Loan Exposure of all Lenders; provided, that the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders.

"Requirement of Law" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Reserves" means, as of any date of determination, Inventory Reserves, Receivables Reserves, Bank Product Reserves and those other reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves with respect to (a) sums that any Loan Party or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (b) amounts owing by any Loan Party or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral) with respect to the Borrowing Base or the Maximum Revolver Amount.

"Restricted Payment" means (a) any declaration or payment of any dividend or the making of any other payment or distribution (whether in cash, securities or other property, assets, rights or obligations), directly or indirectly, on account of Equity Interests issued by Administrative Borrower or any of its Subsidiaries (including any payment in connection with any merger or consolidation involving Administrative Borrower) or to the direct or indirect holders of Equity Interests issued by Administrative Borrower or any of its Subsidiaries in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Administrative Borrower or any of its Subsidiaries), or (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving Administrative Borrower) of any Equity Interests issued by Administrative Borrower or any of its Subsidiaries, or (c) any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Administrative Borrower now or hereafter outstanding.

"Revolver Commitment" means, with respect to each Revolving Lender, its Revolver Commitment, and, with respect to all Revolving Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Revolving Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance or Increase Joinder pursuant to which such Revolving Lender became a Revolving Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement, and as such amounts may be decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) hereof.

"Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Revolving Loans (inclusive of Swing Loans and Protective Advances), *plus* (b) the amount of the Letter of Credit Usage.

"Revolving Lender" means a Lender that has a Revolving Loan Exposure or Letter of Credit Exposure.

"Revolving Loan Base Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Revolving Loan Exposure" means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolver Commitments, the amount of such Lender's Revolver Commitment, and (b) after the termination of the Revolver Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loan LIBOR Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Revolving Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Solvent" means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Standard Letter of Credit Practice" means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Subject Holder" has the meaning specified therefor in Section 2.4(e)(iii) of this Agreement.

"Subordinated Indebtedness" means (a) 2020 Convertible Notes, (b) the 2023 Oasis Convertible Notes and (c) any Indebtedness of any Loan Party or its Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations and is subject to a Subordination Agreement or contains terms and conditions of subordination that are acceptable to Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Term Loan Indebtedness is not Subordinated Indebtedness.

"Subordinated Indebtedness Documents" means, collectively, the documents evidencing the Subordinated Indebtedness, if any.

"Subordination Agreement" means any subordination agreement by and among Agent, Loan Parties and the issuer of any Subordinated Indebtedness on terms and conditions reasonably satisfactory to the Agent or the Required Lenders, as the same may be amended, restated, amended and restated, supplemented and/or modified from time to time subject to the terms thereof. For purposes of this definition, the Intercreditor Agreement is not a Subordination Agreement.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

"Supermajority Lenders" means, at any time, Revolving Lenders having or holding more than 66 2/3% of the aggregate Revolving Loan Exposure of all Revolving Lenders; provided, that the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Supermajority Lenders.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swing Lender" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of this Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Swing Loans on such date.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Term Loan Agent" has the meaning set forth in the definition of Term Loan Credit Agreement.

"Term Loan Credit Agreement" means the First Lien Term Loan Facility Credit Agreement dated as of the Closing Date by and among the Loan Parties party thereto, Cortland Capital Market Services LLC, as agent (in such capacity, the "Term Loan Agent"), and the lenders party thereto, as amended, restated, amended and restated, supplemented or otherwise modified in accordance with the Intercreditor Agreement.

"Term Loan Documents" means the Term Loan Credit Agreement and all security agreements, guarantees, pledged agreements and other agreements or instruments executed in connection therewith, in each case as amended, restated, amended and restated, supplemented or otherwise modified in accordance with the Intercreditor Agreement.

"Term Loan Indebtedness" means the term loan credit facility provided to Borrowers pursuant to the Term Loan Documents.

"Tollytots Limited" means Tollytots Limited, a company incorporated in Hong Kong with registered number 1251086.

"Trademark Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Bank for use.

"Unfinanced Capital Expenditures" means Capital Expenditures (a) not financed with the proceeds of any incurrence of Indebtedness (other than the incurrence of any Revolving Loans), the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (b) that are not reimbursed by a third person (excluding any Loan Party or any of its Affiliates) in the period such expenditures are made pursuant to a written agreement.

"United States" means the United States of America.

"Unused Line Fee" has the meaning specified therefor in Section 2.10(b) of this Agreement.

"US Loan Party" means a Loan Party that is organized under the laws of the United States, any state thereof or the District of Columbia.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. All references to a (i) "fiscal year" shall be references to the fiscal year ending on December 31 and (ii) "fiscal quarter" shall be references to the quarterly accounting periods of the Loan Parties and their consolidated Subsidiaries, ending on March 31, June 30, September 30, and December 31 of each year. Whenever the term "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean the Loan Parties and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit (other than any qualification (x) relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by such accountants, (y) as a result of an impending maturity date of any Indebtedness or (z) any potential inability to satisfy any financial covenant on a future date or in a future period) and (iii) to the extent that any change in GAAP after the Closing Date results in any lease which is, or would be, classified as an operating lease under GAAP as it exists on the Closing Date being classified as a capital lease under revised GAAP, such change in classification of leases from operating leases to capital leases shall be ignored for purposes of this Agreement.

1.3. **Code**. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, restatements, amendments and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, restatements, amendments and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" (whether capitalized or otherwise) shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, whether real, personal or mixed, and including cash, securities, accounts and contract rights. The words "liability" and "liabilities" shall be construed broadly to include all claims, actions, suits, judgments, damages, losses, liabilities, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the outstanding principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses required to be paid hereunder that have accrued and are unpaid (other than unasserted contingent indemnification or unasserted expense reimbursement obligations), and (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations (other than unasserted contingent indemnification or unasserted expense reimbursement obligations) with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations (other than unasserted contingent indemnification or unasserted expense reimbursement obligations) for which a claim or demand for payment has been made in writing on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Pacific standard time or Pacific daylight saving time, as in effect in Los Angeles, California on such day. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6. **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.7. **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.8. **Effect of Amendment and Restatement; No Novation**. Upon the effectiveness of this Agreement, the Original Credit Agreement shall be amended and restated in its entirety by this Agreement. The Obligations (as defined in the Original Credit Agreement) shall continue in full force and effect, and the effectiveness of this Agreement shall not constitute a novation or repayment of such Obligations. Such Obligations, together with any and all additional Obligations incurred by any Borrower under this Agreement or under any of the other Loan Documents, shall continue to be secured by, among other things, the applicable portions of the Collateral, whether now existing or hereafter acquired and wheresoever located, all as more specifically set forth in the Loan Documents. Each Borrower hereby reaffirms its obligations, liabilities, grants of security interests, pledges and the validity of all covenants by it contained in any and all Loan Documents, as amended, supplemented or otherwise modified by this Agreement and by the other Loan Documents delivered prior to the Closing Date. Any and all references in any Loan Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

2. **LOANS AND TERMS OF PAYMENT.**

2.1. **Revolving Loans**.

(a) During the period on and after the Original Closing Date through the Closing Date, Lenders made "Revolving Loans" (as defined in the Original Credit Agreement) to Borrowers under the Original Credit Agreement ("Original Revolving Loans"). Immediately prior to giving effect to this Agreement, as of the Closing Date, the outstanding principal balance of the Original Revolving Loans was $5,022,554.00 (the "Outstanding Original Revolving Loan Balance"). On the Closing Date, and upon the effectiveness of this Agreement, the Outstanding Original Revolving Loan Balance shall be continued and shall convert automatically for all purposes of this Agreement to outstanding "Revolving Loans" (as defined below) hereunder owing to the Lenders as if such Revolving Loans had been made by the Lenders to the Borrowers hereunder on the Closing Date ratably in accordance with their respective Pro Rata Shares (it being understood that no prepayment of Revolving Loans shall be deemed to be made on the Closing Date). After the Closing Date, subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Revolving Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to the lesser of:

(A) the amount equal to (1) the Maximum Revolver Amount, *less* (2) the sum of (y) the Letter of Credit Usage at such time, *plus* (z) the principal amount of Swing Loans outstanding at such time, and

(B) the amount equal to (1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Agent, as adjusted for Reserves established by Agent in accordance with Section 2.1(c)), *less* (2) the sum of (x) the Letter of Credit Usage at such time, *plus* (y) the principal amount of Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they otherwise become due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) at any time, in the exercise of its Permitted Discretion, to establish and increase or decrease Reserves and against the Borrowing Base or the Maximum Revolver Amount; provided, that Agent shall endeavor to notify Administrative Borrower in writing of such establishment or increase (to the extent such increase does not simply reflect an increase consistent with a change in the facts under which the original Reserve was established), as applicable, substantially concurrently with the implementation thereof; provided, further, that in no event shall the failure to deliver such notice delay the establishment or increase, as applicable, in any Reserve. The amount of any Reserve established by Agent, and any changes to the eligibility criteria set forth in the definitions of Eligible Accounts and Eligible Inventory shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve or change in eligibility and shall not be duplicative of any other reserve established and currently maintained or eligibility criteria. Upon notice of or establishment or increase in Reserves, Agent agrees to make itself available to discuss the Reserve or increase, as applicable, and Borrowers may take such action as may be required so that the event, condition, circumstance, or fact that is the basis for such reserve or increase, as applicable, no longer exists, in a manner and to the extent reasonably satisfactory to Agent in the exercise of its Permitted Discretion. In no event shall such notice and opportunity limit the right of Agent to establish or change such Reserve, unless Agent shall have determined, in its Permitted Discretion, that the event, condition, other circumstance, or fact that was the basis for such Reserve or change no longer exists or has otherwise been adequately addressed by Borrowers.

2.2. **[Reserved]**.

2.3. **Borrowing Procedures and Settlements**.

(a) **Procedure for Borrowing Revolving Loans**. Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent's electronic platform or portal) and received by Agent no later than 11:00 a.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the Business Day that is three Business Days prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 11:00 a.m. on the applicable Business Day. All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan.

(b) **Making of Swing Loans**. In the case of a Revolving Loan and so long as any of (i) the aggregate amount of Swing Loans made since the last Settlement Date, *minus* all payments or other amounts applied to Swing Loans since the last Settlement Date, *plus* the amount of the requested Swing Loan does not exceed $6,000,000, or (ii) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Revolving Loans being referred to as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing (unless such condition or conditions have been waived in writing in accordance with Section 14.1), or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans.

(c) **Making of Revolving Loans**.

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a)(i), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day that is (A) in the case of a Base Rate Loan, at least one Business Day prior to the requested Funding Date, or (B) in the case of a LIBOR Rate Loan, prior to 11:00 a.m. at least three Business Days prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate *per annum* equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

(d) **Protective Advances and Optional Overadvances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding (but subject to Section 2.3(d)(iv)), at any time (A) after the occurrence and during the continuance of an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Borrowing Base by more than 10% of the Borrowing Base, and (B) subject to Section 2.3(d)(iv) below, after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by this Section 2.3(d), regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(1).

(iii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder, except that no Extraordinary Advance shall be eligible to be a LIBOR Rate Loan. Prior to Settlement of any Extraordinary Advance, all payments with respect thereto, including interest thereon, shall be payable to Agent solely for its own account. Each Revolving Lender shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any Extraordinary Advance. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, no Extraordinary Advance may be made by Agent if such Extraordinary Advance would cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or any Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments; provided that Agent may make Extraordinary Advances in excess of the foregoing limitations so long as such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments are for Agent's sole and separate account and not for the account of any Lender. No Lender shall have an obligation to settle with Agent for such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments as provided in Section 2.3(e) (or Section 2.3(g), as applicable).

(e) **Settlement**. It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including Swing Loans and Extraordinary Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to any Loan Party's or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans and Extraordinary Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances and, together with the portion of such Swing Loans or Extraordinary Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Revolving Loans (including Swing Loans and Extraordinary Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Extraordinary Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Extraordinary Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Extraordinary Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of the Loan Parties or their Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Extraordinary Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Extraordinary Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation**. Consistent with Section 13.1(h), Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount and stated interest of the Revolving Loans, owing to each Lender, including the Swing Loans owing to Swing Lender, and Extraordinary Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**.

(i) Notwithstanding the provisions of Section 2.4(b)(iii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Agent to the extent of any Extraordinary Advances that were made by Agent and that were required to be, but were not, paid by Defaulting Lender, (B) second, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (C) third, to Issuing Bank, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (D) fourth, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (E) fifth, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers (upon the request of Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (F) sixth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Bank, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent, Issuing Bank, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Pro Rata Share of Revolver Usage *plus* such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied or waived in writing at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), and (y) second, provide Letter of Credit Collateralization for such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to provide Letter of Credit Collateralization for any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Bank;

(C) if Borrowers provide Letter of Credit Collateralization for any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be correspondingly adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither supported by Letter of Credit Collateralization nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is supported by Letter of Credit Collateralization or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and Issuing Bank shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii), or (y) the Swing Lender or Issuing Bank, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Bank, as applicable, and Borrowers to eliminate the Swing Lender's or Issuing Bank's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to Issuing Bank and Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(d). Subject to Section 17.14, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(h) **Independent Obligations**. All Revolving Loans (other than Swing Loans and Extraordinary Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments**.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein; provided, that, for the avoidance of doubt, any payments deposited into a Controlled Account shall be deemed not to be received by Agent on any Business Day unless immediately available funds have been credited to Agent's Account prior to 1:30 p.m. on such Business Day. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Bank) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(ii) Subject to Section 2.4(b)(v) and Section 2.4(e), all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents and to pay interest and principal on Extraordinary Advances that are held solely by Agent pursuant to the terms of Section 2.3(d)(iv), until paid in full,

(B) second, to pay any fees or premiums then due to Agent under the Loan Documents, until paid in full,

(C) third, to pay accrued and unpaid interest due in respect of all Protective Advances, until paid in full,

(D) fourth, to pay the principal of all Protective Advances, until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents, until paid in full,

(G) seventh, to pay interest accrued and unpaid in respect of the outstanding Swing Loans, until paid in full,

(H) eighth, to pay the principal of all outstanding Swing Loans, until paid in full,

(I) ninth, ratably, to pay interest accrued and unpaid in respect of the Revolving Loans (other than Protective Advances and Swing Loans), until paid in full,

(J) tenth, ratably

i. ratably, to pay the principal of all outstanding Revolving Loans (other than Protective Advances and Swing Loans), until paid in full,

ii. to Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof),

iii. ratably, to (y) the Bank Product Providers based upon amounts then certified by each applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Provider on account of Bank Product Obligations, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof,

(K) eleventh, to pay any other outstanding Obligations other than Obligations owed to Defaulting Lenders,

(L) twelfth, ratably to pay any outstanding Obligations owed to Defaulting Lenders; and

(M) thirteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iv) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(v) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(ii) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(vi) For purposes of Section 2.4(b)(iii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements (other than unasserted contingent indemnification and unasserted expense reimbursement obligations), irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vii) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Revolver Commitments**. The Revolver Commitments shall terminate on the Maturity Date or earlier termination thereof pursuant to the terms of this Agreement. Borrowers may reduce the Revolver Commitments, without premium or penalty, to an amount not less than the sum of (A) the Revolver Usage as of such date, *plus* (B) the principal amount of all Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), *plus* (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than $5,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than $5,000,000), shall be made by providing not less than ten Business Days prior written notice to Agent, and shall be irrevocable; provided that (x) Borrowers may condition any such notice of Revolver Commitment reduction or termination on the happening or occurrence of an event, and may rescind any such notice of Revolver Commitment reduction or termination if such event does not happen or occur on or before the date of the proposed Revolver Commitment reduction or termination (in which case, a new notice shall be required to be sent in connection with any subsequent Revolver Commitment reduction or termination), and (y) Borrowers may extend the date of Revolver Commitment reduction or termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed). The Revolver Commitments, once reduced, may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof. In connection with any reduction in the Revolver Commitments prior to the Maturity Date, if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as Agent shall reasonably request, in order to enable Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the Federal Reserve Board.

(d) **Optional Prepayments of Revolving Loans**. Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty.

(e) **Mandatory Prepayments**.

(i) **Borrowing Base**. If, at any time, (A) the Revolver Usage on such date exceeds (B) the lesser of (x) the Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent, or (y) the Maximum Revolver Amount, in all cases as adjusted for Reserves established by Agent in accordance with Section 2.1(c), then Borrowers shall immediately prepay the Obligations in accordance with Section 2.4(f)(i) in an aggregate amount equal to the amount of such excess.

(ii) **Dispositions**. Within one Business Day of the date of receipt by any Loan Party or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or disposition of assets constituting ABL Priority Collateral (as defined in the Intercreditor Agreement) of any Loan Party or any of its Subsidiaries (including Net Cash Proceeds of insurance or arising from casualty losses or condemnations and payments in lieu thereof, but excluding Net Cash Proceeds from sales or dispositions which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (j), (k), (l), (m) or (n) of the definition of Permitted Dispositions), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such Net Cash Proceeds received by such Person in connection with such sales or dispositions; provided, that so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) Borrowers shall have given Agent prior written notice of Borrowers' intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such sale or disposition or the cost of purchase or construction of other assets useful in the business of such Loan Party or its Subsidiaries, (C) the monies are held in a Deposit Account in which Agent has a perfected first-priority security interest, and (D) such Loan Party or its Subsidiary, as applicable, completes such replacement, purchase, or construction within 180 days after the initial receipt of such monies, then the Loan Party or such Loan Party's Subsidiary whose assets were the subject of such disposition shall have the option to apply such monies to the costs of replacement of the assets that are the subject of such sale or disposition unless and to the extent that such applicable period shall have expired without such replacement, purchase, or construction being made or completed, in which case, any amounts remaining in the Deposit Account referred to in clause (C) above shall be paid to Agent and applied in accordance with Section 2.4(f)(ii); provided, that no Loan Party nor any of its Subsidiaries shall have the right to use such Net Cash Proceeds to make such replacements, purchases, or construction in excess of $1,000,000 in any given fiscal year. Nothing contained in this Section 2.4(e)(ii) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) **Equity**. Within one Business Day of the date of the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests (other than (A) in the event that any Loan Party or any of its Subsidiaries forms any Subsidiary in accordance with the terms hereof, the issuance by such Subsidiary of Equity Interests to such Loan Party or such Subsidiary, as applicable, (B) the issuance of Equity Interests by Administrative Borrower to any Person that is an equity holder of Administrative Borrower prior to such issuance (a "Subject Holder") so long as such Subject Holder did not acquire any Equity Interests of Administrative Borrower so as to become a Subject Holder concurrently with, or in contemplation of, the issuance of such Equity Interests to such Subject Holder, (C) [reserved], (D) the issuance of Equity Interests of Administrative Borrower to directors, officers and employees of Administrative Borrower and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors, (E) the issuance of the Preferred Stock on the Closing Date, and (F) the issuance of Equity Interests by a Subsidiary of a Loan Party to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (A) – (E) above), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such issuance. The provisions of this Section 2.4(e)(iii) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement.

(iv) **Indebtedness.** Within one (1) Business Day of the date of receipt by any Loan Party or any of its Subsidiaries of Net Cash Proceeds from the issuance of any debt securities or the issuance or incurrence of any other Indebtedness (other than Net Cash Proceeds of any Permitted Indebtedness (except to the extent such Permitted Indebtedness is incurred to refinance the Obligations)), the Administrative Borrower shall notify the Agent in writing thereof and Borrowers shall prepay the outstanding principal amount of the Obligations in an amount equal to 100% of such Net Cash Proceeds. For the avoidance of doubt, nothing contained herein shall permit (or be construed as permitting or constituting implied consent in respect of) any Disposition, issuance or incurrence by any Loan Party or any of its Subsidiaries of any Equity Interests or any Indebtedness, other than, in each case, solely to the extent constituting Permitted Dispositions or Permitted Indebtedness, as applicable, and made in accordance with Article 6.

(f) **Application of Payments**.

(i) Each prepayment pursuant to Section 2.4(e)(i) shall, (1) so long as no Application Event shall have occurred and be continuing, be applied, first, to the outstanding principal amount of the Revolving Loans until paid in full, and second, to provide Letter of Credit Collateralization with respect to the then outstanding Letter of Credit Usage, and (2) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

(ii) Each prepayment pursuant to Section 2.4(e)(ii) or 2.4(e)(iii) shall (A) so long as no Application Event shall have occurred and be continuing, be applied, first, to the outstanding principal amount of the Revolving Loan (with a corresponding permanent reduction in the Maximum Revolver Amount), until paid in full, and second, to provide Letter of Credit Collateralization with respect to the then outstanding Letter of Credit Usage (with a corresponding permanent reduction in the Maximum Revolver Amount), and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

2.5. **Promise to Pay; Promissory Notes**.

(a) Borrowers agree to pay the Lender Group Expenses on the earlier of (i) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, or (ii) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (ii)). Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender substantially in the form attached hereto as Exhibit P-2. Thereafter, the portion of the Commitments and Loans evidenced by such promissory notes and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations**.

(a) **Interest Rates**. Except as provided in Section 2.6(c) and Section 2.12(d), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(i) if the relevant Obligation is a LIBOR Rate Loan, at a *per annum* rate equal to the LIBOR Rate *plus* the Revolving Loan LIBOR Rate Margin, and

(ii) otherwise, at a *per annum* rate equal to the Base Rate *plus* the Revolving Loan Base Rate Margin.

Borrowers, Lenders and Agent hereby agree that any and all interest on the "Loans" under and as defined in the Original Credit Agreement that is accrued and unpaid as of the Closing Date shall be joint and several Obligations of Borrowers hereunder, and shall be due and payable by Borrowers on the next applicable interest payment date occurring under Section 2.6(d).

(b) **Letter of Credit Fee**. Borrowers shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11(k)) that shall accrue at a *per annum* rate equal to the Revolving Loan LIBOR Rate Margin times the times the average amount of the Letter of Credit Usage during the immediately preceding quarter (or if an Event of Default has occurred, month). Borrowers, Lenders and Agent hereby agree that any and all "Letter of Credit Fees" under and as defined in the Original Credit Agreement that are accrued and unpaid as of the Closing Date shall be joint and several Obligations of Borrowers hereunder, and shall be due and payable by Borrowers on the next monthly payment date for Letter of Credit Fees occurring under this Section 2.6(b).

(c) **Default Rate**. (i) Automatically upon the occurrence and during the continuation of an Event of Default under Section 8.4 or 8.5 and (ii) upon the occurrence and during the continuation of any other Event of Default (other than an Event of Default under Section 8.4 or 8.5), at the direction of Agent or the Required Lenders, and upon written notice by Agent to Borrowers of such direction (provided, that such notice shall not be required for any Event of Default under Section 8.1), (A) all Loans and all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a *per annum* rate equal to two percentage points above the *per annum* rate otherwise applicable thereunder, and (B) the Letter of Credit Fee shall be increased to two percentage points above the *per annum* rate otherwise applicable hereunder.

(d) **Payment**. Except to the extent provided to the contrary in Section 2.10, Section 2.11(k) or Section 2.12(a), (i) all interest and all other fees payable hereunder or under any of the other Loan Documents (other than Letter of Credit Fees) shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit Fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(k) shall be due and payable, in arrears, on the first Business Day of each quarter, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall be due and payable on (x) with respect to Lender Group Expenses outstanding as of the Closing Date, the Closing Date, and (y) otherwise, the earlier of (A) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (B) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) on the first Business Day of each quarter, all Letter of Credit Fees accrued or chargeable hereunder during the prior quarter, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (c), (D) on the first day of each quarter, the Unused Line Fee accrued during the prior quarter pursuant to Section 2.10(b), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) on the Closing Date and thereafter as and when incurred or accrued, all other Lender Group Expenses, and (G) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Loans (unless and until converted into LIBOR Rate Loans in accordance with the terms of this Agreement).

(e) **Computation**. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, *plus* any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7. **Crediting Payments**. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day. If any payment is due hereunder on a day that is not a Business Day, such payment shall be deemed to be due on the immediately succeeding Business Day.

2.8. **Designated Account**. Agent is authorized to make the Revolving Loans, and Issuing Bank is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations**. Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans (including Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Bank for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10. **Fees**.

(a) **Agent Fees**. Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee**. Borrowers shall pay to Agent, for the ratable account of the Revolving Lenders, an unused line fee (the "Unused Line Fee") in an amount equal to the Applicable Unused Line Fee Percentage *per annum* times the result of (i) the aggregate amount of the Revolver Commitments, *less* (ii) the Average Revolver Usage during the immediately preceding month (or portion thereof), which Unused Line Fee shall be due and payable, in arrears, on the first day of each quarter; provided, that if an Event of Default has occurred and is continuing, such Unused Line Fee shall be due and payable, in arrears, on the first day of each month, from and after the Closing Date up to the first day of the quarter; provided, that if an Event of Default has occurred and is continuing, such Unused Line Fee shall be due and payable, in arrears, on the first day of each month, prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full. Borrowers, Lenders and Agent hereby agree that any and all "Unused Commitment Fees" under and as defined in the Original Credit Agreement that are accrued and unpaid as of the Closing Date shall be joint and several Obligations of Borrowers hereunder, and shall be due and payable by Borrowers on the next monthly payment date for Unused Line Fees occurring under this Section 2.10(b).

(c) **Field Examination and Other Fees**. Subject to any limitations set forth in Section 5.7(c), Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of $1,000 per day, per examiner, *plus* reasonable and documented out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Loan Party performed by or on behalf of Agent, and (ii) the reasonable and documented out-of-pocket fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the Collateral, or any portion thereof, or to assess any Loan Party's or its Subsidiaries' business valuation.

2.11. **Letters of Credit**.

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrowers made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue a requested standby Letter of Credit or a sight commercial Letter of Credit for the account of Borrowers. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be (i) irrevocable and made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment, renewal, or extension, and (iii) subject to Issuing Bank's authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent or Issuing Bank may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Letter of Credit Sublimit, or

(ii) [reserved],

(iii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the outstanding amount of Revolving Loans (including Swing Loans), or

(iv) the Letter of Credit Usage would exceed the Borrowing Base at such time *less* the outstanding principal balance of the Revolving Loans (inclusive of Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, Issuing Bank shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii), or (ii) Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate Issuing Bank's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Bank shall have no obligation to issue or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit or request that Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Bank applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will not or may not be in United States Dollars.

(d) Any Issuing Bank (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such Issuing Bank issues any Letter of Credit. In addition, each Issuing Bank (other than Wells Fargo or any of its Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each Letter of Credit issued by such Issuing Bank during the prior calendar week. Borrowers and the Lender Group hereby acknowledge and agree that all Existing Letters of Credit shall constitute Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Existing Letters of Credit were issued by Issuing Bank at the request of Borrowers on the Closing Date. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Bank makes a payment under a Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to Section 2.11(e) to reimburse Issuing Bank, then to such Revolving Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(d), each Revolving Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(d) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Revolving Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of Issuing Bank or the Revolving Lenders, Issuing Bank shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit, and each such Revolving Lender agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank and not reimbursed by Borrowers on the date due as provided in Section 2.11(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Revolving Lender fails to make available to Agent the amount of such Revolving Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Revolving Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to Issuing Bank in connection with any Letter of Credit or requested Letter of Credit, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;

(viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) any prohibition on payment or delay in payment of any amount payable by Issuing Bank to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions;

(x) Issuing Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;

(xi) any foreign language translation provided to Issuing Bank in connection with any Letter of Credit;

(xii) any foreign law or usage as it relates to Issuing Bank's issuance of a Letter of Credit in support of a foreign guaranty including the expiration of such guaranty after the related Letter of Credit expiration date and any resulting drawing paid by Issuing Bank in connection therewith; or

(xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (xiii) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.11(f). If and to the extent that the obligations of Borrowers under this Section 2.11(f) are unenforceable for any reason, Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.11(d), *plus* interest at the rate then applicable to Base Rate Loans hereunder. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank to effect a cure.

(h) Borrowers are responsible for the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by Issuing Bank, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. If Borrowers request Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against Issuing Bank; (ii) Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among Issuing Bank and Borrowers. Borrowers will examine the copy of the Letter of Credit and any other documents sent by Issuing Bank in connection therewith and shall promptly notify Issuing Bank (not later than three (3) Business Days following Borrowers' receipt of documents from Issuing Bank) of any non-compliance with Borrowers' instructions and of any discrepancy in any document under any presentment or other irregularity. Borrowers understand and agree that Issuing Bank is not required to extend the expiration date of any Letter of Credit for any reason. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if Borrowers do not at any time want the then current expiration date of such Letter of Credit to be extended, Borrowers will so notify Agent and Issuing Bank at least 30 calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) Borrowers' reimbursement and payment obligations under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit, any Issuer Document, this Agreement, or any Loan Document, or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) Issuing Bank or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) Issuing Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that any Loan Party or any of its Subsidiaries may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, Issuing Bank or any other Person;

(vi) Issuing Bank or any correspondent honoring a drawing upon receipt of an electronic presentation under a Letter of Credit requiring the same, regardless of whether the original Drawing Documents arrive at Issuing Bank's counters or are different from the electronic presentation;

(vii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.11(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Bank, the beneficiary or any other Person; or

(viii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, that subject to Section 2.11(g) above, the foregoing shall not release Issuing Bank from such liability to Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Issuing Bank's rights and remedies against Borrowers and the obligation of Borrowers to reimburse Issuing Bank for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to any Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank if subsequently Issuing Bank or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrowers shall pay immediately upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank equal to .125% *per annum* times the average amount of the Letter of Credit Usage during the immediately preceding month, *plus* (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all reasonable and documented out-of-pocket expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations).

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or any Loans or obligations to make Loans hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or any other member of the Lender Group any other condition regarding any Letter of Credit, Loans, or obligations to make Loans hereunder,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within 30 days after written demand therefor, such amounts as Agent may, in its reasonable determination, specify to be necessary to compensate Issuing Bank or any other member of the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.11(l) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is 12 months after the date of the issuance of such Letter of Credit; provided, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date. Each commercial Letter of Credit shall expire on the earlier of (i) 120 days after the date of the issuance of such commercial Letter of Credit and (ii) five Business Days prior to the Maturity Date.

(n) If (i) any Event of Default shall occur and be continuing, or (ii) Availability shall at any time be less than zero, then on the Business Day following the date when the Administrative Borrower receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Revolving Lenders with Letter of Credit Exposure representing greater than 50% of the total Letter Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(n) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(n), the Revolving Lenders may (and, upon direction of Agent, shall) advance, as Revolving Loans the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied).

(o) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Bank shall be deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

(q) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

(r) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit that remain outstanding.

(s) At Borrowers' costs and expense, Borrowers shall execute and deliver to Issuing Bank such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Bank to enable Issuing Bank to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Issuing Banks' rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints Issuing Bank as its attorney-in-fact and authorizes Issuing Bank, without notice to Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

2.12. **LIBOR Option**.

(a) **Interest and Interest Payment Dates**. In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "LIBOR Option") to have interest on all or a portion of the Revolving Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; provided, that subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than three months in duration, interest shall be payable at three month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers have properly exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing Borrowers no longer shall have the option to request that Revolving Loans bear interest at a rate based upon the LIBOR Rate.

(b) **LIBOR Election**.

(i) Borrowers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. at least three Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrowers' election of the LIBOR Option for a permitted portion of the Revolving Loans and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline. Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrowers. In connection with each LIBOR Rate Loan, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment or required assignment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of Borrowers, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan and that, in the event that Agent does not defer such application, Borrowers shall be obligated to pay any resulting Funding Losses.

(iii) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall have not more than five LIBOR Rate Loans in effect at any given time. Borrowers may only exercise the LIBOR Option for proposed LIBOR Rate Loans of at least $1,000,000.

(c) **Conversion; Prepayment**. Borrowers may convert LIBOR Rate Loans to Base Rate Loans or prepay LIBOR Rate Loans at any time; provided, that in the event that LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) **Special Provisions Applicable to LIBOR Rate**.

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs (other than Taxes which shall be governed by Section 16), in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including any Changes in Law and changes in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrowers and Agent written notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrowers shall not be entitled to elect the LIBOR Option until such Lender reasonably determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13. **Capital Requirements**.

(a) If, after the date hereof, Issuing Bank or any Lender reasonably determines that (i) any Change in Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or (ii) compliance by Issuing Bank or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy or liquidity requirements (whether or not having the force of law), has the effect of reducing the return on Issuing Bank's, such Lender's, or such holding companies' capital or liquidity as a consequence of Issuing Bank's or such Lender's commitments, Loans, participations or other obligations hereunder to a level below that which Issuing Bank, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Bank's, such Lender's, or such holding companies' then existing policies with respect to capital adequacy or liquidity requirements and assuming the full utilization of such entity's capital) by any amount reasonably deemed by Issuing Bank or such Lender to be material, then Issuing Bank or such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay Issuing Bank or such Lender on written demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Issuing Bank or such Lender of a statement in the amount and setting forth in reasonable detail Issuing Bank's or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, Issuing Bank or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Issuing Bank or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of Issuing Bank's or such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate Issuing Bank or a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Issuing Bank or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further, that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If Issuing Bank or any Lender requests additional or increased costs referred to in Section 2.11(l) or Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (such Issuing Bank or Lender, an "Affected Lender"), then, at the request of Administrative Borrower, such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans, and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable and documented out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain LIBOR Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, designate a different Issuing Bank or substitute a Lender or prospective Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(l), 2.12(d), and 2.13 shall be available to Issuing Bank and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith. Notwithstanding any other provision herein, neither Issuing Bank nor any Lender shall demand compensation pursuant to Section 2.11(l), Section 2.12(d) or this Section 2.13 if it shall not at the time be the general policy or practice of Issuing Bank or such Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14. **[Reserved]**.

2.15. **Joint and Several Liability of Borrowers**.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Revolving Loans or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's or any Bank Product Provider's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group or any Bank Product Provider, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group or any Bank Product Provider, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender Group or any Bank Product Provider including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent, any other member of the Lender Group, or any Bank Product Provider may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and permitted assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or permitted assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.15, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent, any other member of the Lender Group, or any Bank Product Provider against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group and the Bank Product Providers, and shall forthwith be paid to Agent to be credited and applied to the Obligations in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

(i) Each of the Borrowers hereby acknowledges and affirms that it understands that to the extent the Obligations are secured by Real Property located in California, the Borrowers shall be liable for the full amount of the liability hereunder notwithstanding the foreclosure on such Real Property by trustee sale or any other reason impairing such Borrower's right to proceed against any other Loan Party. In accordance with Section 2856 of the California Civil Code or any similar laws of any other applicable jurisdiction, each of the Borrowers hereby waives until such time as the Obligations have been paid in full:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Borrowers by reason of Sections 2787 to 2855, inclusive, 2899, and 3433 of the California Civil Code or any similar laws of any other applicable jurisdiction;

(ii) all rights and defenses that the Borrowers may have because the Obligations are secured by Real Property located in California, meaning, among other things, that: (A) Agent, the other members of the Lender Group, and the Bank Product Providers may collect from the Borrowers without first foreclosing on any real or personal property collateral pledged by any Loan Party, and (B) if Agent, on behalf of the Lender Group, forecloses on any Real Property Collateral pledged by any Loan Party, (1) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) the Lender Group may collect from the Loan Parties even if, by foreclosing on the Real Property Collateral, Agent or the other members of the Lender Group have destroyed or impaired any right the Borrowers may have to collect from any other Loan Party, it being understood that this is an unconditional and irrevocable waiver of any rights and defenses the Borrowers may have because the Obligations are secured by Real Property (including any rights or defenses based upon Sections 580a, 580d, or 726 of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction); and

(iii) all rights and defenses arising out of an election of remedies by Agent, the other members of the Lender Group, and the Bank Product Providers, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Obligations, has destroyed the Borrowers' rights of subrogation and reimbursement against any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction or otherwise.

3. CONDITIONS; TERM OF AGREEMENT.

3.1. **Conditions Precedent to the Initial Extension of Credit**. The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 to this Agreement (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2. **Conditions Precedent to all Extensions of Credit**. The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the satisfaction (or written waiver in accordance with Section 14.1) of the following conditions precedent:

(a) the representations and warranties of each Loan Party contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date); and

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

3.3. **Maturity**. The Commitments shall continue in full force and effect for a term ending on the Maturity Date (unless terminated earlier in accordance with the terms hereof).

3.4. **Effect of Maturity**. On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations) immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations (other than Hedge Obligations) in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations have been paid in full and all commitments to extend credit have terminated, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrowers**. Borrowers have the option, at any time upon not less than ten Business Days prior written notice to Agent (or such shorter period as Agent may agree in its discretion), to repay all of the Obligations in full and terminate the Commitments. The foregoing notwithstanding, (a) Borrowers may condition any such termination notice on the happening or occurrence of an event, and may rescind any such termination notice if such event does not happen or occur on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6. **Conditions Subsequent**. The obligation of the Lender Group (or any member thereof) to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the satisfaction (or written waiver in accordance with Section 14.1), on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 to this Agreement (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date), and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries**.

(a) Each Loan Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified and licensed to do business in each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license, except to the extent the failure to be so qualified or licensed could not reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) is, as of the Closing Date, a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding.

(c) Set forth on Schedule 4.1(c) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by such Loan Party. All of the outstanding Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(d) to this Agreement, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's or any of its Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. Except as set forth on Schedule 4.1(d), no Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

4.2. **Due Authorization; No Conflict**.

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or other organizational action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to such Loan Party, the Governing Documents of such Loan Party, or any material order, judgment, or decree of any court or other Governmental Authority binding on such Loan Party, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material agreement of such Loan Party where any such conflict, breach or default could individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of such Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3. **Governmental Consents**. The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than (i) registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date and (iii) registrations, consents, approvals, notices or other actions which the failure to obtain, make or take could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.4. **Binding Obligations; Perfected Liens**.

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Agent's Liens are validly created, perfected (other than with respect to Collateral in which Agent's Lien is not required to be perfected under the Loan Documents), and first priority Liens, subject only to Permitted Liens which are not required under the terms of the Loan Documents to be subordinated to Agent's Liens.

4.5. **Title to Assets; No Encumbrances**. Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6. **Litigation**.

(a) There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, threatened in writing against a Loan Party or any of its Subsidiaries that (i) either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect or (ii) purport to affect or pertain to any Loan Document or any Recapitalization Transactions.

(b) Schedule 4.6(b) to this Agreement sets forth a complete and accurate description of each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $100,000 that, as of the Closing Date, is pending or, to the knowledge of any Borrower, threatened against a Loan Party or any of its Subsidiaries.

4.7. **Compliance with Laws**. No Loan Party nor any of its Subsidiaries (a) is in violation of any Requirement of Law (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8. **No Material Adverse Effect**. All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since December 31, 2018, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect.

4.9. **Solvency**.

(a) The Loan Parties are Solvent on a consolidated basis and taken as a whole.

(b) Each Borrower is Solvent.

(c) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.10. **Employee Benefits**. No Loan Party, or any of their Subsidiaries maintains, contributes or has liability to contribute to any Benefit Plan and no Loan Party has any liability under Title IV of ERISA with respect to any Employee Benefit Plan. Except as could not reasonably be expected to have a Material Adverse Effect, (i) each Employee Benefit Plan complies with, and has been operated in accordance with, all applicable laws, including ERISA and the IRC, and the terms of such Employee Benefit Plan, (ii) no Loan Party has any liability for a fine, penalty, damage, or excise tax with respect to an Employee Benefit Plan and no Loan Party has received notice from a Governmental Authority, plan administrator, or participant (or any participant's agent) that any such fine, penalty, damage or excise tax may be owing by such Loan Party and (iii) each Employee Benefit Plan intended to be qualified by a Loan Party under Section 401 of the IRC is so qualified.

4.11. **Environmental Condition**. Except as set forth on Schedule 4.11 to this Agreement, (a) to each Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12. **Complete Disclosure**. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents is, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, when furnished and taken as a whole, true and accurate, in all material respects, on the date as of which such information is dated or certified and does not and will not, when furnished and taken as a whole, omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, in each case, after giving effect to all supplements and updates thereto subsequent to the date on which such information was dated, certified or furnished. The Projections delivered to Agent on May 20, 2019 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.13. **Patriot Act**. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act").

4.14. **Indebtedness**. Set forth on Schedule 4.14 to this Agreement is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.15. **Payment of Taxes**. All material Tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all material Taxes shown on such Tax returns to be due and payable and all other material Taxes upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Borrower knows of any proposed Tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided, that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor. Proper and accurate amounts have been withheld by each Loan Party and its Subsidiaries from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions of applicable requirements of Law and such withholdings have been timely paid to the respective governmental authorities. No Loan Party or any Subsidiary of any Loan Party has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.60011-4(b) or is a member of an affiliated, combined or unitary group other than the group of which a Loan Party is the common parent.

4.16. **Margin Stock**. No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

4.17. **Governmental Regulation**. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.19. **Employee and Labor Matters**. There is (i) no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no arbitration proceeding pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000, (ii) no strike, labor dispute, slowdown, lockouts, stoppage or similar action pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries that could reasonably be expected to result liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000, or (iii) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Loan Party or any Subsidiary thereof, and, to the knowledge of any Loan Party, no union (or similar) petition pending with respect to the employees of any Loan Party or its Subsidiaries and no union (or similar) organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries, in each case in connection with their employment by any Loan Party or its Subsidiaries. Except for those that would not reasonably be expected to result in Liabilities in excess of $500,000, individually or in the aggregate, (i) none of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied, (ii) the hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act, (iii) all material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, and (iv) each Loan Party and Subsidiary thereof is in compliance with Requirements of Law with respect to the employment of any employees.

4.20. **No Default under Material Contracts; Disney Licenses**. No Loan Party and no Subsidiary is in default under or with respect to any Material Contract or any Disney License.

4.21. **Leases**. In each case, except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.22. **Eligible Accounts**. As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Borrower's business and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

4.23. **Eligible Inventory**. As to each item of Inventory that is identified by Borrowers as Eligible Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory.

4.24. [**Reserved**].

4.25. **Location of Inventory**. Except as set forth in Schedule 4.25, the Inventory of Loan Parties and their Subsidiaries is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on Schedule 4.25 to this Agreement (as such Schedule may be updated pursuant to Section 5.14).

4.26. **Inventory Records**. Each Loan Party keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.27. [**Reserved**].

4.28. **Notes Documents**. Borrowers have delivered to Agent a complete and correct copy of the Notes Documents, including all schedules and exhibits thereto, executed on the Closing Date. The execution, delivery and performance of each of the Notes Documents has been duly authorized by all necessary action on the part of each Borrower who is a party thereto. Each Notes Document is the legal, valid and binding obligation of each Borrower who is a party thereto, enforceable against each such Borrower in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

4.29. **Term Loan Documents**. Borrowers have delivered to Agent a complete and correct copy of the Term Loan Documents, including all schedules and exhibits thereto, executed on the Closing Date. The execution, delivery and performance of each of the Term Loan Documents has been duly authorized by all necessary action on the part of each Borrower who is a party thereto. Each Term Loan Document is the legal, valid and binding obligation of each Borrower who is a party thereto, enforceable against each such Borrower in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

4.30. **Hedge Agreements**. On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.31. **Insurance**. Schedule 4.31 lists all insurance policies of any nature maintained by the Loan Parties, as of the Closing Date, including issuers, coverages and deductibles. Each Loan Party and each of its Subsidiaries and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses of the same size and character as the business of Loan Parties and, to the extent relevant, owning similar properties in localities where such Person operates.

4.32. **HK Collateral Documents**.

(a) No Filing or Stamp Taxes. Except for registration fees associated with the registration of the HK Collateral Documents at the Hong Kong Companies Registry, there are no Requirements of Law for the HK Collateral Documents to be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the HK Collateral Documents or the transactions contemplated by the HK Collateral Documents.

(b) Ranking of Collateral. The Collateral under the HK Collateral Documents has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Collateral, other than as may be granted in favor of the Agent and the Lenders from time to time.

(c) Ownership. The entire issued share capital of JAKKS HK is legally and beneficially owned and controlled by JAKKS. The entire issued share capital of each HK Loan Party (other than JAKKS HK) is legally and beneficially owned and controlled (directly or indirectly) by JAKKS HK. The shares in the capital of each HK Loan Party are fully paid and are not subject to any option to purchase or similar rights.

(d) Legal and Beneficial Ownership. Each HK Loan Party is the sole legal and beneficial owner of the respective assets over which it purports to grant Collateral.

(e) Shares. The constitutional documents of HK Loan Parties do not restrict or inhibit any transfer of the shares of any HK Loan Party on creation or enforcement of the HK Collateral Documents. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any HK Loan Party (including any option or right of pre-emption or conversion).

(f) Representations and Warranties. The representations and warranties contained in each HK Collateral Document are true and accurate in all material respects at the time they are expressed to be given in each case in accordance with the facts and circumstances then existing.

5. **AFFIRMATIVE COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Commitments and payment in full of the Obligations:

5.1. **Financial Statements, Reports, Certificates**. Borrowers (a) will deliver to Agent each of the financial statements, reports, and other items set forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that no Subsidiary of a Loan Party will have a fiscal year different from that of Administrative Borrower, (c) agree to maintain books and records and a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP, (d) agree that they will maintain at a location in the United States that is subject to a collateral access agreement, true, correct and current copies of the financial data for the financial transactions of JAKKS Hong Kong, JAKKS Canada and each other Foreign Subsidiary in a manner consistent with past practice, and (e) agree that upon the reasonable request of Agent, shall cause copies of the books and records of JAKKS Hong Kong and JAKKS Canada that substantiate the transactions recorded in such general ledger to be located at a location in the United States that is subject to a collateral access agreement.

5.2. **Reporting**. Borrowers (a) will deliver to Agent each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule. Borrowers and Agent hereby agree that the delivery of the Borrowing Base Certificate through the Agent's electronic platform or portal, subject to Agent's authentication process, by such other electronic method as may be approved by Agent from time to time in its sole discretion, or by such other electronic input of information necessary to calculate the Borrowing Bases as may be approved by Agent from time to time in its sole discretion, shall in each case be deemed to satisfy the obligation of Borrowers to deliver such Borrowing Base Certificate, with the same legal effect as if such Borrowing Base Certificate had been manually executed by Borrowers and delivered to Agent.

5.3. **Existence**. Except as otherwise permitted under Section 6.3 or Section 6.4, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4. **Maintenance of Properties and Material Contracts**. Each Loan Party will, and will cause each of its Subsidiaries to, (a) maintain in full force and effect and comply in all material respects with all Material Contracts and (b) maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, obsolescence and condemnation and Permitted Dispositions excepted, except, in each case, where the failure to so maintain and preserve assets could not reasonably be expected to result in a Material Adverse Effect.

5.5. **Taxes**. Each Loan Party will, and will cause each of its Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, other than Taxes not in excess of $100,000 outstanding at any time and other than to the extent that the validity of such Tax is the subject of a Permitted Protest.

5.6. **Insurance**.

(a) Each Loan Party will, and will cause each of its Subsidiaries to, at Borrowers' expense, maintain insurance with respect to each Loan Party's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to agent). All property insurance policies are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause. All certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable and additional insured endorsements in favor of Agent and shall provide for not less than thirty days prior written notice to Agent of the exercise of any right of cancellation. If any Loan Party or its Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(b) Borrowers shall give Agent prompt notice of any loss exceeding $100,000 covered by the casualty or business interruption insurance of any Loan Party or its Subsidiaries. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(c) If at any time the area in which any Real Property that is subject to a Mortgage is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are reasonably satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise reasonably satisfactory to Agent and all Lenders.

5.7. **Inspection**.

(a) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent and its duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided, that an authorized representative of a Borrower shall be allowed to be present) at such reasonable times and intervals as Agent may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Borrowers and during regular business hours, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(b) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations at such reasonable times and intervals as Agent may designate with reasonable prior notice to Administrative Borrower, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(c) So long as no Event of Default shall have occurred and be continuing during a calendar year, Borrowers shall not be obligated to reimburse Agent for more than two field examinations in such calendar year (increasing to three field examinations if an Increased Reporting Event has occurred during such calendar year) and one inventory appraisal in such calendar year (increasing to two inventory appraisals if an Increased Reporting Event has occurred during such calendar year).

5.8. **Compliance with Laws**. Each Loan Party will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9. **Environmental**. Each Loan Party will, and will cause each of its Subsidiaries to,

(a) Keep any property either owned or operated by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, except, in each case, as could not reasonably be expected to result in a Material Environmental Liability,

(b) Comply with Environmental Laws, except, in each case, as could not reasonably be expected to result in a Material Environmental Liability, and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or its Subsidiaries if such release could reasonably be expected to result in a Material Environmental Liability, and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within five Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Loan Party or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Loan Party or its Subsidiaries, in each case, if such Environmental Action could reasonably be expected to result in a Material Environmental Liability, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority if such violation, citation or administrative order could reasonably be expected to result in a Material Environmental Liability.

5.10. **Disclosure Updates**. Each Loan Party will, promptly and in no event later than five Business Days (or such longer period as Agent may agree in its sole discretion) after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report (other than forward-looking information, projections and other financial forecasts and budgets, information of a general economic nature, general information about Borrowers' industry, and information and reports provided by third party advisors) furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in any material respect in light of the circumstances in which made, in each case, after giving effect to all supplements and updates thereto subsequent to the date on which such information was furnished. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Formation of Subsidiaries**. Each Loan Party will, at the time that any Loan Party forms any direct or indirect Subsidiary, acquires any direct or indirect Subsidiary after the Closing Date or, with respect to Subsidiaries that are not Loan Parties as of the Closing Date (for avoidance of doubt, excluding the JV Entities), to the extent Agent reasonably requests that such Subsidiary be joined as a Loan Party after the Closing Date, in each case, within thirty days of such event (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary (i) if such Subsidiary is a Domestic Subsidiary and Administrative Borrower requests, subject to the consent of Agent, that such Domestic Subsidiary be joined as a Borrower hereunder, to provide to Agent a Joinder to this Agreement, and (ii) to provide to Agent a joinder to the Guaranty and Security Agreement, in each case, together with such other guarantees and security agreements (including (x) foreign law documentation reasonably requested by Agent and (y) Mortgages with respect to any Real Property owned in fee of such new Subsidiary with a fair market value of greater than $500,000), as well as appropriate financing statements (and with respect to all property subject to a Mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided, that the Joinder, the joinder to the Guaranty and Security Agreement, and such other guarantees and security agreements shall not be required to be provided to Agent with respect to any Subsidiary of any Loan Party that is a CFC (other than JAKKS HK) if the costs to the Loan Parties of providing such guaranty or such security agreements (including consideration of any material adverse tax consequences reasonably expected to result from such action) are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security or guarantee afforded thereby or if Agent otherwise agrees in its Permitted Discretion not to require such guaranty or such security agreements, (b) provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent; provided, that the Equity Interests of any Subsidiary of a Loan Party that is a CFC (other than JAKKS HK) shall not be required to be pledged if the costs to the Loan Parties of providing such pledge (including consideration of any material adverse tax consequences reasonably expected to result from such action) are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security afforded thereby or if Agent otherwise agrees in its Permitted Discretion not to require such pledge (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) provide to Agent all other documentation, including the Governing Documents of such Subsidiary and one or more opinions of counsel reasonably satisfactory to Agent, which, in its opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance, flood certification documentation or other documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

5.12. **Further Assurances**. Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent and in accordance with the Guaranty and Security Agreement and subject to the limitations and qualifications set forth herein and therein, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in substantially all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to Section 3 of the Guaranty and Security Agreement), to create and perfect Liens in favor of Agent in any Real Property acquired by any other Loan Party with a fair market value in excess of $500,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided, that the foregoing shall not apply to any JV Entity or any Subsidiary of a Loan Party that is a CFC (other than JAKKS HK) if the costs to the Loan Parties of providing such documents (including consideration of any material adverse tax consequences reasonably expected to result from such action) are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security afforded thereby. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed thirty days following the request to do so, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Loan Parties, including all of the outstanding capital Equity Interests of each Borrower (other than JAKKS) and its Subsidiaries (in each case, other than with respect to any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to Section 3 of the Guaranty and Security Agreement). Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, (x) Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise reasonably satisfactory to such Lender and (y) Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be reasonably satisfactory to Agent.

5.13. **Lender Meetings**. Borrowers will, within ninety (90) days after the close of each fiscal year of Administrative Borrower, at the request of Agent or of the Required Lenders and upon reasonable prior notice, hold a meeting (at a mutually agreeable location and time or, at the option of Agent, by conference call) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Loan Parties and their Subsidiaries and the projections presented for the current fiscal year of Administrative Borrower.

5.14. **Location of Inventory; Chief Executive Office**. Each Loan Party will, and will cause each of its Subsidiaries to, keep (a) their Inventory only at the locations identified on Schedule 4.25 to this Agreement (provided that Borrowers may amend Schedule 4.25 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten days (or such later date as the Agent may agree in its sole discretion) prior to the date on which such Inventory is moved to such new location and so long as such new location is within the continental United States), and (b) their respective chief executive offices only at the locations identified on Schedule 7 to the Guaranty and Security Agreement (unless Administrative Borrower has provided Agent with not less than ten days (or such later date as the Agent may agree in its sole discretion) prior written notice of any such change in chief executive office). Each Loan Party will, and will cause each of its Subsidiaries to, use their commercially reasonable efforts to obtain Collateral Access Agreements for each of the locations identified on Schedule 7 to the Guaranty and Security Agreement and Schedule 4.25 to this Agreement.

5.15. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16. **Notices**. Administrative Borrower shall notify promptly (and in no event later than three (3) Business Days after a Responsible Officer of any Loan Party or any of its Subsidiaries becomes aware thereof (or such longer time period as the Agent may agree in its sole discretion)) Agent of the following:

(a) Default; Event of Default; Change of Control; Breach. The occurrence or existence of (i) any Default or Event of Default, or any event or circumstance that could reasonably be expected to become a Default or Event of Default hereunder or a "default" or "event of default" under the Term Loan Facility or any other Indebtedness with an aggregate principal amount outstanding in excess of $10,000,000, or (ii) any event or circumstance that permits, or could reasonably be expected to permit, any party to any Material Contract (other than any Loan Party or its Subsidiaries) to terminate or assign its rights thereunder;

(b) [Reserved].

(c) Proceeding. (i) Any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Loan Party or any Subsidiary and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in liabilities in excess of $500,000 and (ii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary (A) in which the amount of damages claimed is $500,000 or more, (B) in which injunctive or similar relief is sought and if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (C) in which the relief sought is an injunction or other stay of the performance of any Loan Document;

(d) Material Environmental Liabilities. Any event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in Material Environmental Liabilities;

(e) Liens. Any Loan Party shall have knowledge, or received notice, of any (i) ERISA Liens or (ii) any other Lien (other than a Permitted Lien) on any property of any Loan Party having a fair market value in excess of $100,000;

(f) Environmental. (i) The receipt by any Loan Party of any notice of violation of or potential liability or similar notice under Environmental Law, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or Liability under any Environmental Law which in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Material Environmental Liabilities, (iii) the receipt by any Loan Party of notification that any Property of any Loan Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv) any proposed acquisition or lease of Real Estate, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities;

(g) Material Adverse Effect. Subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement, any event, change, circumstance or occurrence (including any violation of or liability under ERISA or any other Requirement of Law and any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption) that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect;

(h) Financial Reporting Change. Any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary; and

(i) Tax. (i) The creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any income or franchise or other material Taxes with respect to any Loan Party and (ii) the creation of any Contractual Obligation of any Loan Party, or the receipt of any request directed to any Loan Party, to make any material adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise.

6. **NEGATIVE COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations (excluding, in all cases, the JV Entities):

6.1. **Indebtedness**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2. **Liens**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3. **Restrictions on Fundamental Changes**. Each Loan Party will not, and will not permit any of its Subsidiaries to,

(a) enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for (i) any such transaction between Loan Parties; provided, that (x) a Borrower must be the surviving entity of any such merger or consolidation to which it is a party and (y) a US Loan Party must be the surviving entity of a merger or consolidation to which it is a party with a non-US Loan Party, (ii) any such transaction between a Loan Party and a Subsidiary of such Loan Party that is not a Loan Party so long as such Loan Party is the surviving entity of any such merger or consolidation, and (iv) any such transaction between Subsidiaries of any Loan Party that are not Loan Parties,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Loan Party with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than any Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party (and if the dissolving entity is a US Loan Party, only to another US Loan Party that is not liquidating or dissolving), or (iii) the liquidation or dissolution of a Subsidiary of any Loan Party that is not a Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Loan Party or a Subsidiary of a Loan Party that is not liquidating or dissolving; provided that with respect to any such Subsidiary the Equity Interests of which (or any portion thereof) are subject to a Lien in favor of Agent, the assets of such Subsidiary are transferred to another Subsidiary the Equity Interests of which (or not less than a corresponding portion thereof) are subject to a Lien in favor of Agent, or

(c) suspend or cease operating a substantial portion of its or their business, except (i) as permitted pursuant to clauses (a) or (b) above, (ii) in connection with a transaction permitted under Section 6.4 or (iii) solely with respect to any Subsidiary of a Loan Party that is not a Loan Party, if such suspension or cessation of business could not reasonably be expected to be materially adverse to the Agent or any Lender.

6.4. **Disposal of Assets**. Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9, each Loan Party will not, and will not permit any of its Subsidiaries to, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of its or their assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division", and including the issuance or sale of Equity Interests by any Loan Party or any of their Subsidiaries).

6.5. **Nature of Business**. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any material change in the nature of its or their business as conducted on the Closing Date or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent any Loan Party and its Subsidiaries from engaging in any business that is reasonably related, incidental or ancillary to its or their business.

6.6. **Prepayments and Amendments**. Each Loan Party will not, and will not permit any of its Subsidiaries to,

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1, (i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, (C) Permitted Intercompany Investments, (D) Permitted Purchase Money Indebtedness, or (ii) prepay, redeem, defease, purchase, or otherwise acquire any Term Loan Indebtedness (whether optionally or pursuant to a mandatory prepayment), other than, subject to and in accordance with the Intercreditor Agreement, (I) mandatory prepayments of the Term Loan Indebtedness in accordance with the terms of the Term Loan Credit Agreement (x) in an amount up to 100% of the Net Cash Proceeds received by any Borrower in connection with a disposition of any Term Priority Collateral (as defined in the Intercreditor Agreement) and (y) in an amount up to 100% of the Net Cash Proceeds received by Borrowers not from Term Priority Collateral (as defined in the Intercreditor Agreement) to the extent required to be applied as a mandatory prepayment to the Term Loans, solely to the extent, with respect to this clause (y), that (1) all such Net Cash Proceeds are first applied to reduce the outstanding principal balance of the Revolving Loans and (2) both before and after giving effect to such prepayment of the Term Loan Indebtedness, the Payment Conditions are satisfied and (II) regularly scheduled payments of the Term Loan Indebtedness pursuant to the Term Loan Credit Agreement as in effect on the Closing Date or as amended in accordance with the terms of the Intercreditor Agreement, or

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, (C) Permitted Intercompany Investments, (D) Indebtedness permitted under clauses (c), (h), (j) and (k) of the definition of Permitted Indebtedness, (E) the 2020 Convertible Notes, the 2023 Oasis Convertible Notes, in each case, in accordance with the provisions of Section 6.14, or (F) the Term Loan Indebtedness in accordance with the terms of the Intercreditor Agreement, or

(ii) the Governing Documents of any Loan Party if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders (it being understood that any amendment, modification or other change to the Governing Documents of any Loan Party that is necessary to affect any transaction permitted by Section 6.3 or Section 6.9 shall be deemed to be not materially adverse to Agent or any of the Lenders).

6.7. **Restricted Payments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any Restricted Payment; provided, that so long as it is permitted by law,

(a) [reserved],

(b) JAKKS may declare and pay dividends with respect to its Qualified Equity Interests payable solely in additional units or shares of its Equity Interests (other than Disqualified Equity Interests),

(c) a Loan Party or a Subsidiary of a Loan Party may make Restricted Payments to a US Loan Party,

(d) (i) any Non-US Loan Party and any Foreign Subsidiary may make Restricted Payments to a Loan Party, and (ii) any Subsidiary of a Loan Party that is not a Loan Party may make Restricted Payments to another Subsidiary of a Loan Party that is not a Loan Party; provided, that if such non-Loan Party Subsidiary is a Domestic Subsidiary, it may not make Restricted Payments to a non-Loan Party Subsidiary that is a Foreign Subsidiary,

(e) JAKKS may redeem Equity Interests owned by employees for the express purpose of permitting such employees to satisfy their respective income tax obligations that result directly from the vesting of restricted Equity Interest grants owned by such employees, in an aggregate amount not to exceed $1,000,000 in any Fiscal Year,

(f) cash payments in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof, any exercise of warrants or options, any conversion of the Convertible Notes or any Permitted Investment in an aggregate amount not to exceed $1,000,000 per Fiscal Year,

(g) any Restricted Payment by a Subsidiary of JAKKS to JAKKS or another Loan Party (other than Non-US Loan Parties, to the extent such Restricted Payment is made by a Subsidiary that is a US Loan Party), ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary of JAKKS, to JAKKS, any other such Loan Party, or to each other owner of Equity Interests of such Subsidiary, based on their relative ownership interests of such Equity Interests), and

(h) (i) to the extent constituting Restricted Payments, transactions permitted by Section 6.9 and (ii) any Loan Party or any Subsidiary thereof may make Restricted Payments directly to any Loan Party or any Subsidiary thereof to permit any payment in respect of a transaction permitted by Section 6.9.

6.8. **Fiscal Periods; Accounting Methods; Names and Jurisdictions**. Each Loan Party will not, and will not permit any of its Subsidiaries to, (a) modify or change its fiscal year-end from December 31 of each year, or its method for determining fiscal quarters of any Loan Party or of any consolidated Subsidiaries, or (b) modify or change its method of accounting, accounting treatment or reporting practices (other than as may be required to conform to GAAP) or as permitted pursuant to Section 1.2 hereof.

6.9. **Investments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10. **Transactions with Affiliates**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between such Loan Party or its Subsidiaries, on the one hand, and any Affiliate of such Loan Party or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, and (ii) are no less favorable, taken as a whole, to such Loan Party or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) any indemnity provided for the benefit of directors (or comparable managers) of a Loan Party or one of its Subsidiaries so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(c) the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party or one of its Subsidiaries in the ordinary course of business and consistent with industry practice so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(d) (i) transactions solely among US Loan Parties, (ii) transactions solely among Non-US Loan Parties and (iii) transactions solely among Subsidiaries of Loan Parties that are not Loan Parties,

(e) transactions permitted by Section 6.3, Section 6.7, or Section 6.9,

(f) all such transactions existing as of the Closing Date and described on Schedule 6.10,

(g) [reserved],

(h) agreements for the non-exclusive licensing of intellectual property, or distribution of products, in each case, among the Loan Parties and their Subsidiaries for the purpose of the counterparty thereof operating its business, and agreements for the assignment of intellectual property from any Loan Party or any of its Subsidiaries to any Loan Party.

6.11. **Use of Proceeds**. Each Loan Party will not, and will not permit any of its Subsidiaries to, use the proceeds of any Loan made hereunder for any purpose other than (a) on the Closing Date, to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, in each case, as set forth in the Loan Documents, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose, in each case, that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.12. **Limitation on Issuance of Equity Interests**. Except for the issuance or sale of Qualified Equity Interests by Administrative Borrower, each Loan Party will not, and will not permit any of its Subsidiaries to, issue or sell any of its Equity Interests.

6.13. **Inventory with Bailees**. Each Borrower will not, and will not permit any of its Subsidiaries to, store its Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.25 (as such Schedule may be amended in accordance with Section 5.14).

6.14. **Amendments to Subordinated Indebtedness**. Each Borrower will not, and will not permit any of its Subsidiaries to, change or amend the terms of (i) any Subordinated Indebtedness, which is subject to a Subordination Agreement, except to the extent permitted by the applicable Subordination Agreement, or (ii) the 2020 Convertible Notes, the 2023 Oasis Convertible Notes or any other Subordinated Indebtedness not subject to a Subordination Agreement, if the effect of such change or amendment is to: (A) increase the interest rate on such Indebtedness (B) require cash interest to be payable instead of interest payable-in-kind (to the extent such Subordinated Indebtedness Documents previously required interest to be paid in kind); (C) require payment of any make-whole, premium or additional fees on the Subordinated Indebtedness (other than any required consent fees not exceeding 1% of the aggregate outstanding principal amount of such Subordinated Indebtedness); (E) shorten the dates upon which payments of principal or interest are due on such Indebtedness; (F) add or change in a manner adverse to Loan Parties any event of default or add or make more restrictive any covenant with respect to such Indebtedness; (G) change in a manner adverse to Loan Parties the prepayment provisions of such Indebtedness; (H) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); (I) cause the Subordinated Indebtedness to become secured or guaranteed by any entity that is not a Guarantor of the Obligations (or which is otherwise prohibited hereunder) or (J) change or amend any other term if such change or amendment would materially increase the obligations of Loan Parties or confer additional material rights on the holder of such Indebtedness in a manner adverse to Loan Parties, Agent or Lenders.

6.15. **Sale-Leasebacks**. Each Borrower will not, and will not permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

6.16. **Hazardous Materials**. Each Borrower will not, and will not permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any Real Estate (whether or not owned by any Loan Party or any Subsidiary), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.17. **No Burdensome Agreements**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction (a) on its ability or the ability of any such Subsidiary to pay dividends or make any other distribution on any of such Loan Party's or Subsidiary's Equity Interests or to pay fees, including management fees, or make other payments and distributions to a Borrower or any other Loan Party, or to pay any interest, principal or other payments with respect to the Obligations; or (b) prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, except, in each case, (i) under the Loan Documents, (ii) under the Term Loan Facility or in connection with any document or instrument governing any other Permitted Liens; provided, that any such restriction contained therein relates only to the asset or assets subject to such Permitted Liens; provided, further, that any such restriction is (x) not materially more restrictive, taken as a whole, as determined in good faith by Administrative Borrower, on the Loan Parties and their Subsidiaries than the Loan Documents or (y) will not, in the good faith judgment of Administrative Borrower, affect the ability of Borrowers to make any payments required hereunder in respect of the Obligations, (iv) under the Convertible Notes, (v) under the Preferred Stock, (vi) any prohibition or limitation that (a) exists pursuant to applicable Requirements of Law, (b) consists of customary restrictions and conditions contained in any agreement relating to any Permitted Disposition pending the consummation of such sale, (c) restricts subletting or assignment of leasehold interests contained in any lease governing a leasehold interest of any Loan Party or any Subsidiary thereof, (d) exists in any agreement in effect at the time such Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary or (e) affects an asset that is acquired after the Closing Date that is in existence at the time of acquisition of such asset (but not created in contemplation thereof), which encumbrance or restriction is not applicable to other assets of the Loan Parties or their Subsidiaries and (viii) any customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and not otherwise prohibited hereunder.

6.18. **Limitations on Certain Loan Parties**. Each of Maui, Inc., an Ohio corporation and Kids Only, Inc., a Massachusetts corporation, shall not own or acquire any material assets or engage itself in any material business operations, except in connection with its obligations under the Loan Documents and the Term Loan Documents and except in connection with a transaction permitted under Section 6.3. Moose Mountain Marketing, Inc., a New Jersey corporation, shall not own or acquire any material assets or engage itself in any material business operations, except in connection with (a) its obligations under the Loan Documents and the Term Loan Documents, (b) its current business which is to act as a licensee of licensed properties for use with products marketing by the Seasonal Division, which principally include ball pits, activity tables and ride-on toys, or (c) a transaction permitted under Section 6.3.

Notwithstanding anything else herein to the contrary, the Loan Parties and their Subsidiaries may enter into transactions with any Affiliate of a Borrower or any Subsidiary constituting transactions, payments, outstanding intercompany balances, Property transfers and other activities constituting the transfer pricing system of the Loan Parties and their Subsidiaries consistent with past practice and in the ordinary course of business of the Loan Parties and their Subsidiaries.

7. FINANCIAL COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations, Borrowers will:

(a) **Fixed Charge Coverage Ratio**. Maintain a Fixed Charge Coverage Ratio, calculated for each 12 month period ending on the first day of any Covenant Testing Period and the last day of each fiscal month occurring until the end of any Covenant Testing Period (including the last day thereof), in each case of at least 1.10 to 1.00.

(b) **Minimum Liquidity**. At all times, maintain (i) Liquidity of at least $25,000,000, and (ii) Availability of at least $9,000,000.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1. **Payments**. If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit;

8.2. **Covenants**. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.1, 5.2, 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers' affairs, finances, and accounts with officers and employees of any Borrower, in each case, in accordance with the terms thereof), 5.10, 5.11 or 5.13 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of ten days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent;

8.3. **Judgments**. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of $500,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of thirty consecutive days at any time after the entry of any such judgment, order, or award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. **Voluntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5. **Involuntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6. **Default Under Other Agreements**. If (a) any Loan Party defaults in the performance of the obligations under any agreement governing Indebtedness in an outstanding principal amount of $10,000,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, (b) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party, (c) a Loan Party or any Subsidiary fails to make any payment when due or any other event of default shall occur under any agreement or instrument relating to the 2020 Convertible Notes, 2023 Oasis Convertible Notes or the Term Loan Indebtedness, or (d) one or more Disney Licenses which are material to the business of the Loan Parties, as determined by Agent in its Permitted Discretion, are terminated by a Disney Entity as a result of a breach of such Disney License by the applicable Loan Party or another event or circumstance that gives the applicable Disney Entity the right to terminate such Disney License or Disney Licenses;

8.7. **Representations, etc**. If any warranty, representation, certificate, statement, or Record made by any Loan Party herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8. **Guaranty**. If the obligation of any Guarantor under the guaranty contained in the Guaranty and Security Agreement or any Foreign Collateral Document, as applicable, is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement (including, for the avoidance of doubt, by virtue of the merger of a Loan Party into another Loan Party, to the extent expressly permitted hereunder) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

8.9. **Security Documents**. If the Guaranty and Security Agreement or any other Loan Document that purports to create a Lien in favor of Agent in any Collateral, shall, for any reason, fail or cease to create a valid and perfected and first priority Lien (subject to Permitted liens which are not required under the terms of the Loan Documents to be subordinated to Agent's Liens), except (a) in connection with any transaction permitted under this Agreement (including any release of any Lien on any Collateral in connection therewith) or (b) as a result of an action or failure to act on the part of Agent or any Lender;

8.10. **Loan Documents**. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document; or

8.11. **Change of Control**. A Change of Control shall occur.

8.12. **Invalidity of Intercreditor Agreement**. The Intercreditor Agreement shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect (other than in accordance with its terms), any Loan Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, the Obligations, for any reason, shall not have the priority contemplated by the Intercreditor Agreement.

8.13. **HK Loan Parties; Non-US Loan Parties**. It is or becomes unlawful for a HK Loan Party or any other Non-US Loan Party to perform any of its obligations under the Loan Documents, or any HK Loan Party or any other Non-US Loan Party repudiates or rescinds a Loan Document or evidences an intention to repudiate/rescind a Loan Document.

9. **RIGHTS AND REMEDIES.**

9.1. **Rights and Remedies**. Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Borrowers, (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) by written notice to Borrowers, declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Revolving Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit; and

(c) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full (including Borrowers being obligated to provide (and Borrowers agree that they will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit and (2) Bank Product Collateralization to be held as security for Borrowers' or their Subsidiaries' obligations in respect of outstanding Bank Products (except as such Bank Products are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized)), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrowers.

9.2. **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION.

10.1. **Demand; Protest; etc**. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2. **The Lender Group's Liability for Collateral**. Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

10.3. **Indemnification**. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, the Issuing Bank, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided, that Borrowers shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Loan Parties' and their Subsidiaries' compliance with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Indemnified Persons that do not involve any acts or omissions of any Loan Party (other than any disputes against any Indemnified Person in its capacity or fulfilling the role as Agent) or (ii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents; provided, that notwithstanding the foregoing, in no event shall Borrower's indemnification obligations under this Section 10.3 include any Indemnified Liabilities in respect of legal fees, disbursements and expenses in excess of the reasonable and documented out-of-pocket fees of one firm of counsel to the Indemnified Persons, taken as a whole, and, to the extent necessary, one local counsel in each relevant jurisdiction and one firm of specialty counsel in each specialty area to the Indemnified Persons, taken as a whole, and solely in the case of an actual or perceived conflict of interest, where the Indemnified Person affected by such conflict informs the Borrowers of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Indemnified Persons (but excluding, in all cases, the allocated costs of in-house or internal counsel to any Indemnified Person). This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party:	c/o Administrative Borrower 2951 28th Street Santa Monica, California 90405 Attn: Brent Novak Fax No.: (424) 268-9655
with a copy to:	Feder Kaszovitz LLP 845 Third Avenue New York, New York 10022 Attention: Geoffrey A. Bass, Esq. Fax No.: (212) 888-7776
If to Agent:	**WELLS FARGO BANK, NATIONAL ASSOCIATION** 2450 Colorado Avenue, Suite 3000 West Santa Monica, California 90404 Attn: Loan Portfolio Manager Fax No.: (866) 654-4090
with a copy to:	Goldberg Kohn Ltd. 55 East Monroe, Suite 3300 Chicago, Illinois 60603 Attn: Christopher Swartout, Esq. Fax No.: (312) 863-7837

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK**.

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(d) **EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(e) **NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH PARTY HERETO HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

(f) **IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:**

(i) **WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.**

(ii) **THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.**

(iii) **UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.**

(iv) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.**

(v) **THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.**

(vi) **THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.**

(vii) **THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.**

(g) Service of Process. Each Loan Party hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to, arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrowers specified herein (and shall be effective when such mailing shall be effective as provided therein). Each Loan Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(h) Each HK Loan Party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from: (a) suit; (b) jurisdiction of any court; (c) relief by way of injunction or order for specific performance or recovery of property; (d) attachment of its assets (whether before or after judgment); and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings).

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.**

13.1. **Assignments and Participations**.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Administrative Borrower; provided, that no consent of Administrative Borrower shall be required (1) if an Event of Default has occurred and is continuing or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(B) Agent, Swing Lender, and Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural person,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000),

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of $3,500, and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decrease the amount or postpone the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; provided that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of a Revolver Commitment (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Revolver Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Revolver Commitment to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form for the purposes of the IRC, including under Section 5f.103-1(c) of the United States Treasury Regulations and its successor. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2. **Successors**. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS.**

14.1. **Amendments and Waivers**.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c)(i),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document (provided that any postponement or delay of any mandatory prepayments required pursuant to Section 2.4(e) shall only require the consent of Required Lenders),

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (x) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders), (y) that any reduction, waiver or other modification of or with respect to any mandatory prepayments required pursuant to Section 2.4(e) shall only require the consent of the Required Lenders and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) amend, modify, or eliminate Section 3.1 or 3.2,

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, release or contractually subordinate Agent's Lien in and to any of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", Supermajority Lenders or "Pro Rata Share",

(ix) other than in connection with a transaction expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii) or Section 2.4(e) or (f),

(xi) at any time that any Real Property is included in the Collateral, add, increase, renew or extend any Loan, Letter of Credit or Commitment hereunder until the completion of flood due diligence, documentation and coverage as required by the Flood Laws or as otherwise satisfactory to all Lenders, or

(xii) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of a Loan Party;

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders;

(c) No amendment, waiver, modification, elimination, or consent shall, without written consent of Agent, Borrowers and the Supermajority Lenders, amend, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount or change Section 2.1(c);

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders;

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders; and

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender.

14.2. **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit, and (iii) Funding Losses). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3. **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. **AGENT; THE LENDER GROUP.**

15.1. **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2. **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any request for a Loan, Letter of Credit or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

15.4. **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision**. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity**. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9. **Successor Agent**. Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or an Event of Default has occurred and is continuing) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity**. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration; provided, that Bank Product Obligations not entitled to the application set forth in Section 2.4(b)(iii)(J) shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Providers in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's reasonable opinion, could reasonably be expected to expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property. Notwithstanding the provisions of this Section 15.11, the Agent shall be authorized, without the consent of any Lender and without the requirement that an asset sale consisting of the sale, transfer or other disposition having occurred, to release any security interest in any building, structure or improvement located in an area determined by the Federal Emergency Management Agency to have special flood hazards.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection**. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party to Agent that has not been contemporaneously provided by such Loan Party to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. **WITHHOLDING TAXES.**

16.1. **Payments**. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party shall make the requisite withholding, pay over to the applicable Governmental Authority the withheld tax in accordance with applicable law, and furnish to Agent as soon as practicable after the date the payment of any such Tax, certified copies of tax receipts evidencing such payment by the Loan Parties or other evidence of such payment reasonably satisfactory to Agent. Furthermore, if any such Tax is an Indemnified Taxes, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that after such withholding or deduction has been made for or on account of any Indemnified Taxes (including such withholdings and deductions applicable additional sums payable under this Section 16.1), the applicable recipient receives an amount equal to the sum it would have received if no such withholding or deduction of Indemnified Taxes had been made. The Loan Parties will timely pay any Other Taxes or, at the request of Agent, timely reimburse Agent for such Other Taxes. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations, and for the avoidance of doubt, for the purposes of this Section 16.1, an Issuing Lender shall be treated as a Lender.

16.2. **Exemptions**.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant is entitled to claim an exemption from or reduction of withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent or Administrative Borrower (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

16.3. **Reductions**.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4. **Refunds**. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, it shall, subject to Section 9, pay over such refund to the Administrative Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16.4 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1. **Effectiveness**. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2. **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3. **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. **Bank Product Providers**. Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (*less* any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. **Debtor-Creditor Relationship**. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

17.8. **Revival and Reinstatement of Obligations; Certain Waivers**. If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9. **Confidentiality**.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11. **Patriot Act; Due Diligence**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12. **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13. **JAKKS as Agent for Borrowers**. Each Borrower hereby irrevocably appoints JAKKS as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), (c) to enter into Bank Product Provider Agreements on behalf of Borrowers and their Subsidiaries, and (d) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to (i) disputes solely between or among Agent-Related Persons and/or Lender-Related Persons (other than Agent in its capacity as Agent) that do not involve any violation of the Loan Documents by a Loan Party, (ii) any claims primarily related to Taxes or any costs attributable to such Taxes which shall be governed by Section 16 or (iii) any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be; provided, that, notwithstanding the foregoing, in no event shall Borrowers' indemnification obligations under this Section 17.13 include any liability, expense, loss or claim of damage or injury in respect of legal fees, disbursements and expenses in excess of the reasonable and documented out-of-pocket fees of one firm of counsel to all Agent-Related Persons and Lender-Related Persons, taken as a whole, and, to the extent necessary, one local counsel in each relevant jurisdiction to all Agent-Related Persons and Lender-Related Persons, taken as a whole, and solely in the case of an actual or perceived conflict of interest, where the Agent-Related Person or Lender-Related Persons affected by such conflict informs the Borrowers of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Agent-Related Persons or Lender-Related Persons (but excluding, in all cases, the allocated costs of in-house or internal counsel to any Agent-Related Person or Lender-Related Person).

17.14. **Acknowledgement and Consent to Bail-In of EEA Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

17.15. **Intercreditor Agreement**. Each Lender hereby (a) agrees that this Agreement and the other Loan Documents, and the rights and remedies of the Agent and the Lenders hereunder and thereunder, are subject to the terms of the Intercreditor Agreement (and to the extent any term of this Agreement or any other Loan Document conflicts or is inconsistent with the terms thereof, the terms of the Intercreditor Agreement shall control), (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement, and (c) hereby authorizes and instructs the Agent to enter into the Intercreditor Agreement

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWERS:

JAKKS PACIFIC, INC.,
a Delaware corporation

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

DISGUISE, INC.,
a Delaware corporation

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

JAKKS SALES LLC,
a Delaware limited liability company

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MAUI, INC.,
an Ohio corporation

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MOOSE MOUNTAIN MARKETING, INC.,
a New Jersey corporation

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

KIDS ONLY, INC.,
a Massachusetts corporation

By: */s/ Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Agent and as a Lender

By: */s/ Ben Culver*
Name: Ben Culver
Its Authorized Signatory

Exhibit 10.3

FIRST LIEN TERM LOAN FACILITY CREDIT AGREEMENT

Dated as of August 9, 2019

by and among

CORTLAND CAPITAL MARKET SERVICES LLC,
as Agent,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as the Lenders,

and

JAKKS PACIFIC, INC.,
DISGUISE, INC.,
JAKKS SALES LLC,
MAUI, INC.,
MOOSE MOUNTAIN MARKETING, INC., and
KIDS ONLY, INC.,
as Borrowers,

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SCHEDULES

FIRST LIEN TERM LOAN FACILITY

CREDIT AGREEMENT

THIS FIRST LIEN TERM LOAN FACILITY CREDIT AGREEMENT, is entered into as of August 9, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement") by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **CORTLAND CAPITAL MARKET SERVICES LLC**, a Delaware limited liability company (in its individual capacity, "Cortland"), in its capacity as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), JAKKS PACIFIC, INC., a Delaware corporation ("JAKKS"), the Subsidiaries of JAKKS identified on the signature pages hereof as "Borrowers", and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J (each, a "Borrower" and individually and collectively, jointly and severally, the "Borrowers").

RECITALS

WHEREAS, at the Borrowers' request, the Lenders have agreed to provide term loans to the Borrowers on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1. **Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"2020 Convertible Notes" means the 4.875% convertible senior notes due June 1, 2020 issued by JAKKS to Regions Bank pursuant to the 2020 Convertible Notes Indenture in an aggregate principal amount not to exceed $1,905,000 after giving effect to the transactions to occur on the Closing Date.

"2020 Convertible Notes Indenture" means that certain Indenture dated June 9, 2014, between JAKKS and Regions Bank, as trustee (as successor trustee to Wells Fargo Bank, National Association), pursuant to which JAKKS issued the 2020 Convertible Notes.

"2023 Oasis Convertible Notes" means the following convertible senior notes issued by JAKKS to Oasis Investments II Master Fund Ltd.: (i) the $21.5 million principal amount convertible senior note, issued on November 7, 2017 and amended and restated on August 9, 2019, (ii) the $8.5 million principal amount convertible senior note, issued on July 26, 2018 and amended and restated on August 9, 2019, and (iii) the $8.0 million principal amount convertible senior note, issued on August 9, 2019.

"ABL Agent" means Wells Fargo Bank, National Association, in its capacity as administrative agent and/or collateral agent under the ABL Facility, together with its successors and permitted assigns.

"ABL Credit Agreement" means the Amended and Restated Credit Agreement, dated as of August 9, 2019, by and among the ABL Agent, the lenders party thereto and the Borrowers, as the same may be amended, restated, amended and restated or otherwise modified or Replaced from time to time in accordance with its terms and the terms of the Intercreditor Agreement.

"ABL Facility" means the asset-based revolving credit facility provided to the Borrowers pursuant to the ABL Loan Documents, as the same may be amended, modified, supplemented or Replaced from time to time in accordance with the terms of the Intercreditor Agreement.

"ABL Loan Documents" means the ABL Credit Agreement and each other document related to or evidencing the ABL Facility, including the Loan Documents (as defined in the ABL Credit Agreement), as each may be amended, restated or otherwise modified or Replaced from time to time in accordance with the terms of the Intercreditor Agreement.

"ABL Obligations" has the meaning assigned thereto in the Intercreditor Agreement.

"ABL Priority Collateral" has the meaning assigned thereto in the Intercreditor Agreement.

"A.S. Design Limited" means A.S. Design Limited, a company incorporated in Hong Kong with registered number 453139.

"Acceptable Transaction" means a transaction pursuant to which one hundred percent (100%) of the common stock of Administrative Borrower is acquired for cash (including by means of a merger, consolidation, amalgamation or other business combination) by any Person or "group" (as such term is used in Section 13(d)(3) of the Exchange Act) of Persons, so long as concurrently therewith the Obligations are paid in full in cash; provided that such transaction is announced by September 30, 2019 and consummated within 60 days thereafter.

"Account" means an account (as that term is defined in the UCC).

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Additional Lender" has the meaning specified therefor in Section 2.12(b) of this Agreement.

"Additional Obligor" has the meaning specified therefor in Section 5.11 of this Agreement.

"Administrative Borrower" has the meaning specified therefor in Section 17.13 of this Agreement.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that for purposes of Section 6.10 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each officer or director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person. Notwithstanding anything to the contrary contained herein, the holders of the Series A Preferred Stock shall not be deemed to be an "Affiliate" of any Loan Party or any Subsidiary thereof solely due to such holder of Series A Preferred Stock having the power to elect one or more directors to the Board of Directors of JAKKS or having designated one or more directors to the Board of Directors of JAKKS.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Related Persons.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

"Agent's Liens" means the Liens granted by each Loan Party to Agent under the Loan Documents and securing the Obligations.

"Agreement" has the meaning specified therefor in the preamble to this Agreement.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, kickbacks, money laundering or corruption in any jurisdiction applicable to any Loan Party or any of its Subsidiaries or Affiliates.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering or similar offense, any predicate crime to money laundering or similar offense, or any financial record keeping and reporting requirements related thereto.

"Applicable Rate" means 10.50% per annum; provided, that, for purposes of determining the amount of interest payable hereunder in cash and in "kind" (i) 8.00% per annum shall constitute the "Cash Rate" and (ii) 2.50% per annum shall constitute the "PIK Rate"; provided, further, that to the extent permitted by Section 2.12, the Applicable Rate applicable to Incremental Term Loans shall be the rate per annum specified in the Incremental Facility Amendment relating thereto.

"Application Event" means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.7(b)(iii) of this Agreement.

"Arbor Toys Company Limited" means Arbor Toys Company Limited, a company incorporated in Hong Kong with registered number 1011343.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A to this Agreement, or such other form as agreed by the Agent.

"Authorized Person" means any one of the individuals identified on Schedule A-2 to this Agreement (as such schedule may be updated from time to time by written notice from Administrative Borrower to Agent), or any other individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Availability" means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans (as defined in the ABL Credit Agreement) under Section 2.1 of the ABL Credit Agreement (after giving effect to the then outstanding Revolver Usage (as defined in the ABL Credit Agreement)).

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank Product" means any one or more of the following financial products or accommodations: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulations.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise)) or compensation plan to which any Loan Party or any of its Subsidiaries incurs or otherwise has or could reasonably be expected to have any obligation or liability, contingent or otherwise, including by reason of any ERISA Affiliate.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers or other governing body) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers or other governing body).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing of Term Loans hereunder on the Closing Date pursuant to Article 2 hereof.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in New York City.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than $1,000,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or of any recognized securities dealer having combined capital and surplus of not less than $1,000,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above "Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Cash Rate" has the meaning specified therefor in the definition of Applicable Rate.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC) in which any Loan Party is a "United States shareholder" within the meaning of Section 951(b) of the IRC.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means the occurrence of any of the following:

(a) any "person" or "group" within the meaning of Section 13(d) and 14(d) of the Exchange Act (other than the Permitted Holders) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of Equity Interests of Administrative Borrower (excluding the Series A Preferred Stock) representing 30% or more of the combined voting power of all Equity Interests of Administrative Borrower (excluding the Series A Preferred Stock) entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Administrative Borrower,

(b) during any period of 24 consecutive months commencing on or after the Closing Date, the occurrence of a change in the composition of the Board of Directors of Administrative Borrower such that a majority of the members of such Board of Directors are not Continuing Directors,

(c) Borrowers fail to own and control, directly or indirectly, 100% (or, if applicable, such other percentage as set forth in the Perfection Certificate as of the Closing Date) of the Equity Interests of each other Loan Party free and clear of all Liens, other than Permitted Liens (other than pursuant to a transaction not prohibited by Section 6.3 or Section 6.4),

(d) there shall be consummated any consolidation or merger of Administrative Borrower pursuant to which the Equity Interests of Administrative Borrower would be converted into cash, securities or other property, other than a merger or consolidation of Administrative Borrower in which the holders of such Equity Interests immediately prior to the merger have substantially the same proportionate ownership in the aggregate, directly or indirectly, of Equity Interests of the surviving Person immediately after the merger as it had of the Equity Interests of Administrative Borrower immediately prior to such merger,

(e) all or substantially all of the Administrative Borrower's assets shall be sold, leased, conveyed or otherwise disposed of as an entirety or substantially as an entirety to any Person (including any Affiliate or associate of Administrative Borrower) in one or a series of transactions,

(f) any Person (or two or more Persons acting in concert) (other than the Permitted Holders) shall have acquired (by contract or otherwise), or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Administrative Borrower or control over the Equity Interests of Administrative Borrower (excluding the Series A Preferred Stock) entitled to vote for members of the board of directors of Administrative Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing thirty percent (30%) or more of the combined voting power of such Equity Interests (provided, however, that the entry by any Person (or two or more Persons acting in concert) (other than the Permitted Holders) into a contract or arrangement that, upon consummation thereof, will result in an Acceptable Transaction shall not constitute a "Change of Control" under this clause (f) unless and until such Acceptable Transaction is consummated),

(g) the occurrence of a "Change of Control" as defined in the ABL Credit Agreement (or any similar term under the ABL Facility),

(h) the occurrence of any "Fundamental Change" as defined in the Convertible Notes (except a Fundamental Change under the 2020 Convertible Notes resulting solely from the delisting of the Equity Interests of Administrative Borrower) or "change of control" (or similar concept) under any other Indebtedness with an aggregate principal amount outstanding in excess of $10,000,000; and

(i) the occurrence of a "Liquidity Event" as defined in the "Certificate of Designations of the New Series A Preferred Stock" governing the Series A Preferred Stock.

"Closing Costs" means the costs, fees, charges, expenses, disbursements and other payments (including of external counsel and financial advisors) incurred and paid by the Loan Parties pursuant to the Loan Documents or otherwise in connection with, or relating to, the Recapitalization Transactions, in each case, reasonably satisfactory to the Required Lenders.

"Closing Date" means August 9, 2019, being the date of effectiveness of this Agreement in accordance with Section 3.1 and the date on which the initial Term Loans were made to the Borrowers in accordance with Section 2.1.

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted or purported to be granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Loan Party's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collateral Documents" means all agreements, documents and instruments that create (or purport to create) a Lien in favor of the Agent or any Secured Party in any Collateral, including, collectively, the Guaranty and Security Agreement, the Control Agreements, the Collateral Access Agreements, the Copyright Security Agreement, the Patent Security Agreement, the Trademark Security Agreement, any Mortgages, the HK Collateral Documents, each security and collateral document required to be entered into or delivered by any Non-US Loan Party, and all other security agreements, pledge agreements, other documents or agreements relating to Collateral, lease assignments and other similar agreements pursuant to which any Loan Party pledges or grants a Lien on Collateral pursuant to or in connection with this Agreement, the other Loan Documents and/or the transactions contemplated hereby or thereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) contemplated thereunder.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Competitor" means each Person that is a direct competitor of Borrowers or their Subsidiaries and that has been identified and designated as a "Competitor" in a written notice delivered by the Administrative Borrower to the Agent prior to the applicable date of determination (and each Affiliate of such designated Person, to the extent that such Affiliate is clearly identifiable on the basis of its name); provided, that in connection with any assignment or participation, the Assignee or Participant with respect to such proposed assignment or participation that is an investment bank, a commercial bank, a finance company, a fund, or other Person which, in each case, is engaged in the business of making, purchasing, holding or otherwise investing in commercial loans, bonds, debt securities or other similar extensions of credit in the ordinary course of its business, and merely has an economic interest in any such direct competitor, and is not itself such a direct competitor of Borrowers or their Subsidiaries, shall not be deemed to be a direct competitor for the purposes of this definition; provided, further, that the foregoing shall not apply retroactively to disqualify any Person that has acquired an interest in the Term Loans prior to the date that the Administrative Borrower has delivered a notice to the Agent designating such Person as a Competitor as required hereby.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C to this Agreement delivered by the chief financial officer or treasurer of Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Consenting Convertible Noteholders" has the meaning specified therefor in the Recapitalization Transaction Agreement.

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Administrative Borrower on the Closing Date, (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the members of the Nominating and Corporate Governance Committee of Administrative Borrower (the "Nominating Committee") and by a majority of the Continuing Directors then in office, (c) any individual named on the "Preapproved List" (as defined in the Amended and Restated Charter of the Nominating Committee) and (d) any individual elected by holders of Administrative Borrower's Series A Preferred Stock to serve as a "Series A Preferred Stock Director" (as defined in the "Certificate of Designations of the New Series A Preferred Stock").

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Convertible Notes" means the 2020 Convertible Notes and the 2023 Oasis Convertible Notes, collectively.

"Copyright Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Cortland" has the meaning specified therefor in the preamble to this Agreement.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Interest" has the meaning specified therefor in Section 2.4(a).

"Default Rate" means a rate equal to (x) the Applicable Rate plus (y) 2.00% per annum.

"Deposit Account" means any deposit account (as that term is defined in the UCC).

"Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Account of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to this Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

"Discharge of ABL Obligations" has the meaning specified therefor in the Intercreditor Agreement.

"Disguise Limited" means Disguise Limited, a company incorporated in Hong Kong with registered number 1287686.

"Disqualified Equity Interests" means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) matures (other than as a result of the optional redemption by the issuer thereof) or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable and the termination of the Term Loan Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) require the scheduled payments of dividends to be made in cash (other than dividends in respect of taxes), or (d) are or become convertible into or exchangeable (other than at the option of the issuer thereof) for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date. Notwithstanding anything to the contrary contained herein, the Series A Preferred Stock shall not constitute Disqualified Equity Interests.

"Dollars" or "$" means United States dollars.

"Domestic Subsidiary" means any Subsidiary of any Loan Party that is not a Foreign Subsidiary.

"EBITDA" means, with respect to any fiscal period and with respect to Borrowers determined, in each case, on a consolidated basis in accordance with GAAP:

(a) the consolidated net income (or loss),

minus

(b) without duplication, the sum of the following amounts for such period to the extent included in determining consolidated net income (or loss) for such period:

(i) unusual or non-recurring, and (ii) interest income,

plus

(c) without duplication, the sum of the following amounts for such period to the extent deducted in determining consolidated net income (or loss) for such period:

(i) non-cash unusual and non-recurring losses,

(ii) Interest Expense,

(iii) income taxes,

(iv) depreciation and amortization,

(v) transaction fees and expenses incurred in connection with the consummation of this Agreement, and

(vi) any non-cash loss (or minus any gain) from foreign currency translation.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the UCC).

"Equity Interests" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act). Notwithstanding anything to the contrary contained herein, the Convertible Notes shall not be deemed to be "Equity Interests".

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, together with all regulations and published guidance thereunder.

"ERISA Affiliate" means, collectively, any Loan Party and any Person (whether or not incorporated) that is treated a single employer or under common control with a Loan Party or its Subsidiaries under ERISA or Section 414(b) of the Code or Section 414(c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, Section 414(m) of the Code or Section 414(o) of the Code.

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30-day notice requirement is duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to any Title IV Plan; (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any ERISA Affiliate or receipt by any Loan Party of notice thereof or notice of withdrawal liability (within the meaning of Section 4201 of ERISA) in respect thereof) from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of or receipt by any Loan Party of a notice of insolvency or termination (or treatment of a plan amendment as termination) under Section 4245 or 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due; (h) the imposition of a Lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any assets of any ERISA Affiliate; (i) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder; (j) a Title IV Plan is in "at risk" status within the meaning of Code Section 430(i); (k) a Multiemployer Plan is in "endangered status" or "critical status" within the meaning of Section 432(b) of the Code; (l) the failure of any Loan Party or any ERISA Affiliate to meet the minimum funding standard under Section 412 or 430 of the Code with respect to any Title IV Plan or the filing of an application for a funding waiver with respect to any Title IV Plan; (m) an amendment to a Benefit Plan that could result in the posting of bond or security under Section 436(f) of the Code; (n) the incurrence of a material tax liability by any Loan Party with respect to any Benefit Plan under Sections 4975, 4980B, 4980D, 4980H and 4980I of the Code, as applicable; (o) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to a Loan Party; (p) the incurrence by any ERISA Affiliate of any liability pursuant to Section 4063 or Section 4064 of ERISA or a substantial cessation of operations with respect to a Title IV Plan within the meaning of Section 4062(e) of ERISA; (q) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (r) the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent; and (s) any violation of any non- United States Requirement of Law with respect to any Benefit Plan subject to Requirements of Law outside of the United States.

"ERISA Lien" means any Lien in an aggregate amount exceeding $1,000,000 imposed by or under, or arising in connection with, or resulting from, Title IV of ERISA or Section 303 of ERISA (or related sections) or any corresponding provision of the Code (including Section 430(k) of the Code.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Subsidiary" means each direct or indirect Subsidiary of any Borrower (a) that is (but only for so long as it is) prohibited by applicable Requirement of Law or contractual obligation (including any restriction in any agreements relating to Subsidiaries that are joint ventures) from guaranteeing or granting Liens to secure any of the Obligations, or with respect to which any consent, approval, license or authorization from any Governmental Authority or third party (other than a Borrower or Subsidiary thereof) would be required for the provision of any such guaranty; provided, that such contractual obligation (x) shall have been in place on the Closing Date or, with respect to any Subsidiary that is formed or acquired or otherwise becomes a Subsidiary after the Closing Date, at the time such Subsidiary is formed, acquired or otherwise becomes a Subsidiary and (y) did not arise and was not created in connection with, as part of or in anticipation or contemplation of the Closing Date, or such Subsidiary being formed, acquired or otherwise becoming a Subsidiary, as applicable, (b) with respect to which the Administrative Borrower reasonably determines, in consultation with the Agent, that the provision of a guaranty by such Subsidiary would result in material adverse tax consequences, or (c) with respect to which the Administrative Borrower and the Agent reasonably agree that the burden or cost of such Subsidiary providing a guaranty of the Obligations is excessive in relation to the benefits to the Lenders afforded thereby. Notwithstanding the foregoing, in no event shall any Subsidiary that guarantees the ABL Facility or any Subordinated Indebtedness constitute an Excluded Subsidiary hereunder.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), and any franchise taxes, in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office or applicable lending office is located in or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), (ii) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Loan Party), except that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, treaty, order or other decision or other Change in Law with respect to any of the foregoing by any Governmental Authority, and (iv) any withholding taxes imposed under FATCA.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Fee Letter" means that certain fee letter, dated as of even date with this Agreement, among Administrative Borrower and Agent.

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Foreign Collateral Document" means each HK Collateral Document and each other Collateral Document entered into or delivered by any Non-US Loan Party.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary" means (x) any direct or indirect subsidiary of any Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia and (y) any direct or indirect subsidiary of any Loan Party all (other than an immaterial amount) the assets of which (directly or through one or more entities treated as partnerships or disregarded entities for U.S. federal income Tax purposes) constitute equity interests in, or Indebtedness of, one or more CFCs other than Protected CFCs.

"GAAP" means, subject to Section 1.2, generally accepted accounting principles as in effect in the United States as of the date of determination, consistently applied.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guarantees all or a portion of the Obligations, including each Person that is a "Guarantor" under the Guaranty and Security Agreement and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with this Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each of the Loan Parties to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"HK Collateral Documents" means the HK Security Debenture, the HK Share Charge, the HK Security Trust and all documents delivered to Agent or any Lender in connection with any of the foregoing, as each such document may be amended, restated, supplemented or otherwise modified from time to time.

"HK Loan Parties" means Loan Parties incorporated or otherwise registered at the Hong Kong Companies Registry or Loan Parties otherwise having a place of business in Hong Kong.

"HK Security Debenture" means the Debenture, dated as of the Closing Date, made by HK Loan Parties in favor of Agent for the benefit of itself and the Lenders in respect of all the assets and undertaking of HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"HK Security Trust" means the Security Trust, dated as of the Closing Date, made by HK Loan Parties in favor of Agent for the benefit of itself and the Lenders in respect of Collateral granted by HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"HK Share Charge" means the Share Charge, dated as of the Closing Date, made by JAKKS, JAKKS Hong Kong and JAKKS Pacific (Asia) Limited in favor of Agent for the benefit of itself and the Lenders in respect of all the issued shares in the HK Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"Incremental Facility Amendment" has the meaning specified therefor in Section 2.12(b) of this Agreement.

"Incremental Term Loan" has the meaning specified therefor in Section 2.12(a) of this Agreement.

"Incremental Term Loan Offer Acceptance Date" has the meaning specified therefor in Section 2.12(b) of this Agreement.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed (but limited in the case of obligations that are non-recourse (other than with respect to such asset), to the lesser of the fair market value of such assets and the outstanding principal amount of the Indebtedness secured thereby), (e) all obligations of such Person to pay the deferred purchase price of assets (other than (i) trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices and (ii) royalty payments payable in the ordinary course of business in respect of non-exclusive licenses) and any earn-out or similar obligations, (f) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) the face amount of any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, (ii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation and (iii) "Indebtedness" shall exclude the portion of any earn-out or other contingent consideration that are not yet required to be reflected as a liability on the balance sheet of the applicable Person in accordance with GAAP.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date with this Agreement, executed and delivered by each Loan Party and each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of August 9, 2019, between the Agent and the ABL Agent, and as acknowledged by the Loan Parties party thereto, as modified from time to time in accordance with its terms.

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrowers for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Payment Date" means (a) the date that is six (6) months after the Closing Date, and the last day of each subsequent six (6) month period, (b) each date of any repayment or prepayment made in respect of any Term Loans and (c) the Termination Date; provided, that, if any of the foregoing dates is not a Business Day, such date shall instead be the next succeeding Business Day.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business in an aggregate amount not to exceed $500,000 per fiscal year, and (b) *bona fide* accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment ***plus*** the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

"JAKKS" has the meaning specified therefor in the preamble to this Agreement.

"JAKKS Canada" means JAKKS Pacific (Canada), Inc., a company organized under the laws of the province of New Brunswick, Canada.

"JAKKS HK" is a collective reference to JAKKS Hong Kong, JAKKS Pacific (Asia) Limited, Moose Mountain Toymakers Limited, Disguise Limited, A.S. Design Limited, Arbor Toys Company Limited, Kids Only, Limited and Tollytots Limited.

"JAKKS Hong Kong" means JAKKS Pacific (H.K.) Limited, a company incorporated in Hong Kong with registered number 468246.

"JAKKS Pacific (Asia) Limited" means JAKKS Pacific (Asia) Limited, a company incorporated in Hong Kong with registered number 971208.

"Joinder" means a joinder agreement substantially in the form of Exhibit J to this Agreement.

"JV Entities" means each of Pacific Animation Partners, LLC, DreamPlay Toys, LLC, DreamPlay, LLC, JAKKS Pacific Trading Limited, JAKKS Meisheng Trading (Shanghai) Limited, and JAKKS Meisheng Animation (H.K.) Limited.

"Kids Only, Limited" means Kids Only, Limited, a company incorporated in Hong Kong with registered number 455075.

"Lender" has the meaning set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement or any Additional Lender pursuant to any Incremental Facility Amendment, and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group in accordance with the terms hereof, (b) amounts payable to the Agent pursuant to the Fee Letter, and reasonable and documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any reasonable and documented out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses) paid or incurred by the Lender Group to enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell, the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 5.7(c) of this Agreement, (h) Agent's and Lenders' reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the Obligations, the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party, (i) Agent's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys' fees and due diligence expenses) incurred in advising on, structuring, drafting, reviewing, negotiating, administering (including travel, meals, and lodging), syndicating (including reasonable and documented out-of-pocket costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending and/or restating, supplementing, waiving, or otherwise modifying the Loan Documents, and (j) Agent's and each Lender's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented out-of-pocket attorneys, accountants, consultants, and other advisors fees and expenses) incurred in accelerating the Obligations, or terminating, enforcing (including reasonable and documented out-of-pocket attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," (or similar transaction or negotiation) or an Insolvency Proceeding concerning any Loan Party or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents or the Obligations, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral; provided, that the fees and expenses of counsel that shall constitute Lender Group Expenses shall in any event be limited to one primary counsel to Agent and the Lenders, taken as a whole, one local counsel to Agent in each reasonably necessary jurisdiction, one specialty counsel to Agent in each reasonably necessary specialty area (including insolvency law and regulatory law) and, solely in the case of an actual or perceived conflict of interest, where the Lender affected by such conflict informs the Administrative Borrower of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Lenders (but excluding, in all cases, the allocated costs of in-house or internal counsel to Agent or any Lender).

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Related Persons.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidity" means, as of any date of determination, the sum of Availability and Qualified Cash.

"Loan Account" has the meaning specified therefor in Section 2.3 of this Agreement.

"Loan Documents" means this Agreement, the Fee Letter, the Intercompany Subordination Agreement, the Intercreditor Agreement, the Collateral Documents, each Perfection Certificate, each Incremental Facility Amendment (if any), each note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party and any member of the Lender Group in connection with this Agreement.

"Loan Party" means each Borrower or Guarantor (collectively, the "Loan Parties").

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on, or material impairment of, (a) the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Loan Parties and their Subsidiaries, taken as a whole, (b) the Loan Parties' ability to perform their obligations under the Loan Documents to which they are parties, (c) the legality or validity of the Loan Documents, (d) the Lender Group's rights and remedies under the Loan Documents, or ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent), or (e) the enforceability or priority of Agent's Liens with respect to all or a material portion of the Collateral.

"Material Contract" means (a) each license agreement, customer contract or other arrangement that generates or otherwise contributes to, individually, more than 10% of the Borrowers' consolidated revenues during any fiscal quarter and (b) any and all other contracts or other arrangements to which any Loan Party or any of its Subsidiaries is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Material Environmental Liability" means Environmental Liabilities exceeding $500,000 in the aggregate at any time.

"Maturity Date" means February 9, 2023 (or, with respect to any Incremental Term Loan, such later date as may be permitted in accordance with Section 2.12 and specified in the applicable Incremental Facility Amendment).

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Moose Mountain Toymakers Limited" means Moose Mountain Toymakers Limited, a company incorporated in Hong Kong with registered number 540751.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, to which any Loan Party or any of its Subsidiaries incurs or otherwise has or could reasonably be expected to have any obligation or liability, contingent or otherwise, including as a result of an ERISA Affiliate.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by any Loan Party or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Loan Party or such Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on the assets subject to such sale or disposition (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents, (B) Indebtedness owing under the ABL Facility, and (C) Indebtedness assumed by the purchaser of such asset) which is required by the terms of such Indebtedness to be, and is, prepaid or repaid in connection with such sale or disposition (but only to the extent of the mandatory repayment or prepayment), (ii) the amount of (x) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such sale or disposition and (y) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such sale or disposition, in the case of each of clauses (x) and (y), to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash proceeds, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, and (iii) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (iv) are (x) deposited into escrow with a third party escrow agent or set aside in a Deposit Account that is subject to a Control Agreement in favor of Agent, and (y) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.8(b) of this Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries, or the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such issuance or incurrence, and (ii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such issuance or incurrence, in the case of each of clauses (i) and (ii), to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-US Loan Party" means a Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia.

"Notes Documents" means the 2020 Convertible Notes Indenture, the 2023 Oasis Convertible Notes, and all documents, instruments and agreements executed or delivered in connection therewith.

"Obligations" means all loans (including the Term Loans), advances, credit extensions and other accommodations made to, and all Indebtedness, debts, liabilities, obligations, covenants and duties of any kind and description of, the Loan Parties owed to the Lenders, the Agent or any other Secured Party, in each case, arising out of, under, pursuant or with respect to, in connection with, or evidenced by, this Agreement, any other Loan Document or any Term Loan, including (but not limited to) all principal, interest (including default interest, interest accruing after the maturity of the Term Loans and interest accruing after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), guarantees, reimbursement and indemnification obligations, fees (including the fees provided for in the Fee Letter), charges, expenses and disbursements (including the Lender Group Expenses) (including any fees, charges, disbursements or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and all other amounts or liabilities that any Loan Party is required to pay to or reimburse the Agent, any Lender or any other Secured Party pursuant to or in connection with the Loan Documents or any Term Loans, or by law or otherwise, and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising; provided, that, anything to the contrary contained in the foregoing notwithstanding, the Obligations shall exclude any Excluded Swap Obligation. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"OPEB Plan" means any Benefit Plan that is a "employee welfare benefit plan" or "welfare plan" (as such terms are defined in Section 3(1) of ERISA) subject to ERISA, which provides benefits for or will provide benefits for former employees or future former employees of any Loan Party or any Subsidiary thereof who have retired or separated from service (except for continued medical benefit coverage required to be provided under Section 4980B of the Code) for which any Loan Party or Subsidiary thereof has or could reasonably be expected to have any liability.

"Other Taxes" means all present or future stamp, court, excise, value added, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are imposed with respect to an assignment, other than an assignment pursuant to a request by Borrowers.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning set forth in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"PBGC" means the United States Pension Benefit Guaranty Corporation or any successor thereto.

"Perfection Certificate" means a certificate substantially in the form of Exhibit P to this Agreement.

"Permitted Discretion" means, with respect to any term or provision of this Agreement or the other Loan Documents, that requires or permits the approval, satisfaction, discretion, determination, decision, action or inaction or any similar concept of or by the Agent, in each case, whether at the request of the Borrower or otherwise, as applicable (collectively, an "Agent Action"), a determination made in good faith with respect to such Agent Action by the Agent in the exercise of its reasonable business judgment; provided, that, at the Agent's option, the Agent may confirm its authority to take such Agent Action by (a) notifying all Lenders via the Platform of the proposed Agent Action and (b) Lenders constituting Required Lenders consenting to such Agent Action in the manner prescribed in the relevant Electronic Communication; provided, that if a Lender does not expressly provide its consent or does not expressly provide its lack of consent with respect to such Agent Action within five (5) Business Days of receiving such Electronic Communication (or such shorter period set forth in this Agreement), then such Lender shall be deemed to have consented to such Agent Action.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business and leases or subleases of Real Property not useful in the conduct of the business of the Loan Parties and their Subsidiaries,

(b) sales of Inventory to buyers in the ordinary course of business and dispositions of Inventory that are comprised of goods which are defective,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case, on a non-recourse basis in the ordinary course of business, of past due accounts receivable arising in the ordinary course of business, but only in connection with the collection or compromise thereof,

(g) any involuntary loss, damage or destruction of property,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets of any Loan Party or its Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Administrative Borrower,

(k) (i) the lapse of registered or applied-for patents, trademarks, copyrights and other intellectual property of any Loan Party or any of its Subsidiaries, or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights (and applications therefor) (in each case under clauses (i) and (ii)) to the extent such intellectual property is not material to the business of the Loan Parties and such lapse and/or abandonment is not materially adverse to the interests of the Lender Group,

(l) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement,

(m) the making of Permitted Investments and Permitted Intercompany Investments,

(n) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, sales, transfers or other dispositions of assets (i) from any Loan Party or any of its Subsidiaries to a US Loan Party, (ii) from any Non-US Loan Party to any Non-US Loan Party and (iii) from any Subsidiary of any Loan Party that is not a Loan Party to any other Subsidiary of any Loan Party, and

(o) dispositions (other than any Equity Interests of any Loan Party or any Subsidiary thereof or any Accounts of any Loan Party) not otherwise permitted hereunder which are made for fair market value so long as Borrowers make any mandatory prepayment in the amount of the Net Cash Proceeds of such disposition if and to the extent required by Section 2.8(b)(i); provided, that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition, (ii) not less than 90% of the aggregate sales price from such disposition shall be paid in cash, (iii) the aggregate fair market value of all assets so sold by Loan Parties and their Subsidiaries, together, shall not exceed in any Fiscal Year $1,000,000 and (iv) after giving effect to such disposition, Loan Parties are in compliance on a pro forma basis with the financial covenants set forth in Section 7.

"Permitted Holders" means, without duplication, (a) each of the Consenting Convertible Noteholders, (b) Affiliates of the Persons referred to in clause (a), (c) any Person that has no material assets (other than Equity Interests in JAKKS, cash and cash equivalents) and of which no Person or "group" (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than Persons referred to in clauses (a) and (b), holds more than 30% of the total voting power of the Equity Interests of such Person, and (d) any "group" the members of which include one or more Permitted Holders (a "Permitted Holder Group"), so long as no Person or "group", other than Persons referred to in clauses (a), (b) and (c), beneficially owns more than 30% of the total Equity Interests in JAKKS held by the Permitted Holder Group; each, a "Permitted Holder". In addition, Oasis Investments II Master Fund Ltd., solely as a holder of 2023 Oasis Convertible Notes, together with its Affiliates acting in such capacity, shall be deemed to constitute a Permitted Holder; provided, however, that this sentence shall not apply to Oasis Investments II Master Fund Ltd. and its Affiliates in their capacity as holders of common stock of Administrative Borrower (including any common stock that they receive upon conversion of the 2023 Oasis Convertible Notes).

"Permitted Indebtedness" means:

(a) Indebtedness in respect of the Obligations,

(b) Indebtedness as of the Closing Date set forth on Schedule 4.14 to this Agreement and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,

(d) Indebtedness arising in connection with the endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness,

(f) unsecured Indebtedness of Administrative Borrower owing to current or former employees, officers or directors of Administrative Borrower or any of its Subsidiaries (or any spouses, ex-spouses, estates, trusts, heirs or other beneficiaries of any of the foregoing) incurred in connection with the repurchase by Administrative Borrower of Equity Interests of Administrative Borrower that have been issued to such Persons, so long as (i) no Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness and (ii) the aggregate principal amount of all such Indebtedness outstanding at any one time does not exceed $1,000,000,

(g) the Indebtedness under the ABL Facility not to exceed the Maximum ABL Amount (as defined in the Intercreditor Agreement),

(h) Permitted Surety Bonds,

(i) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(j) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that is incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's or such Subsidiary's operations and not for speculative purposes,

(k) Indebtedness incurred in the ordinary course of business in respect of Bank Products,

(l) (i) 401(k) deferrals and matches that are paid within 30 days of the applicable payroll withholding date and (ii) other unsecured Indebtedness incurred in connection with deferred compensation or similar plan provisions to the employees, officers or directors of any Loan Party or any of their respective Subsidiaries not to exceed $500,000 in the aggregate in any fiscal year,

(m) contingent obligations with respect to Indebtedness of any Loan Party or any of their respective Subsidiaries to the extent that the party that is obligated under such contingent obligations could have incurred such underlying Indebtedness under Section 6.1,

(n) Indebtedness arising from Permitted Investments (including Permitted Intercompany Investments),

(o) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business,

(p) Indebtedness (other than Permitted Intercompany Investments) in an aggregate outstanding principal amount not to exceed $500,000 at any time outstanding for all Subsidiaries of the Loan Parties that are not Loan Parties; provided, that such Indebtedness is not directly or indirectly recourse to any of the Loan Parties or of their respective assets,

(q) [reserved],

(r) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness,

(s) Subordinated Indebtedness; provided, that, interest, premiums or fees (other than customary fees payable to any agent or trustee thereunder) on such Subordinated Indebtedness shall only be permitted to be paid "in kind" and shall not be payable or paid in cash without the prior written consent of the Required Lenders, and no such Subordinated Indebtedness shall have a weighted average life to maturity shorter than that of the Term Loans.

(t) the Convertible Notes (as in effect on the Closing Date and as amended, restated, amended and restated, supplemented or otherwise modified in accordance with this Agreement), and

(u) Indebtedness arising under (i) the factoring agreements with Standard Chartered Bank with respect to Accounts owing from Wal-Mart to any of the HK Loan Parties, and (ii) the factoring agreements with Wells Fargo Bank, N.A., Hong Kong Branch with respect to Accounts owing from Target to any of the HK Loan Parties.

"Permitted Intercompany Investments" means (x) Investments made by (a) a US Loan Party to another US Loan Party, (b) a Non-US Loan Party to another Loan Party, (c) a Subsidiary of a Loan Party that is not a Loan Party to another Subsidiary of a Loan Party that is not a Loan Party, (d) a Subsidiary of a Loan Party that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement and (e) a US Loan Party to a Non-US Loan Party, so long as (i) the aggregate amount of all such loans incurred under this clause (d) (irrespective of whether incurred by one or multiple borrowers) does not exceed $5,000,000 outstanding at any one time and (ii) at the time of the making of such loan, no Event of Default has occurred and is continuing or would result therefrom and (y) intercompany balances in the ordinary course of business consistent with past practices in connection with the transfer pricing system of the Loan Parties and their Subsidiaries.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents,

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(c) advances made in connection with purchases of goods or services or to customers or distributors, and prepaid expenses, in each case in the ordinary course of business,

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries,

(e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to this Agreement,

(f) guarantees permitted under the definition of Permitted Indebtedness,

(g) Permitted Intercompany Investments,

(h) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,

(i) deposits of cash made in the ordinary course of business to secure performance of operating leases,

(j) (i) non-cash loans and advances to employees, officers, and directors of a Loan Party or any of its Subsidiaries for the purpose of purchasing Equity Interests in Administrative Borrower so long as the proceeds of such loans are used in their entirety to purchase such Equity Interests in Administrative Borrower, and (ii) loans and advances to employees and officers of a Loan Party or any of its Subsidiaries in the ordinary course of business for any other business purpose in an aggregate amount not to exceed $1,000,000 at any one time outstanding,

(k) the formation of new Subsidiaries (subject to compliance with Section 5.11 hereof),

(l) Investments consisting of extensions of credit in the nature of accounts receivable arising from the grant of trade credit in the ordinary course of business,

(m) Investments resulting from entering into agreements relative to obligations permitted under clause (j) and/or (k) of the definition of Permitted Indebtedness,

(n) Equity Investments by any Loan Party in any Subsidiary of such Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law, and

(o) Investments received as the non-cash portion of consideration received in connection with transactions permitted pursuant to clause (o) of the definition of "Permitted Dispositions".

"Permitted Liens" means:

(a) Liens created pursuant to the Loan Documents or otherwise granted to, or for the benefit of, Agent or any other Secured Party to secure the Obligations,

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests and the aggregate liabilities secured by such Liens do not exceed $500,000,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of this Agreement,

(d) Liens set forth on Schedule P-2 to this Agreement; provided, that any such Lien shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,

(e) the interests of lessors or sublessors under any lease not prohibited by this Agreement and non-exclusive licensors under license agreements not prohibited by this Agreement,

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof,

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,

(h) Liens on cash amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with worker's compensation, unemployment insurance or other social security legislation,

(i) Liens on amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with the making or entering into of bids, tenders, statutory obligations, trade contracts, governmental contracts, leases and other similar obligations in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure any Borrower's and its Subsidiaries' reimbursement obligations with respect to surety, stay or customs and appeal bonds or performance and return of money bonds obtained in the ordinary course of business,

(k) with respect to any Real Property, easements, rights of way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges and encumbrances and minor title deficiencies on or with respect to such Real Property, in each case, that do not materially detract from the value of such Real Property or materially interfere with or impair the use or operation thereof,

(l) [reserved],

(m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,

(n) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business,

(o) Liens granted on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(q) Permitted Dispositions,

(r) Liens securing Indebtedness under the ABL Facility; provided, that such Liens (and the priority thereof) shall at all times be subject to the Intercreditor Agreement,

(s) [reserved],

(t) Liens arising under (i) the factoring agreements with Standard Chartered Bank with respect to Accounts owing from Wal-Mart to any of the HK Loan Parties, and (ii) the factoring agreements with Wells Fargo Bank, N.A., Hong Kong Branch with respect to Accounts owing from Target to any of the HK Loan Parties, in each case, so long as such Liens are limited to such Accounts and the Proceeds thereof,

(u) Liens on leased property evidenced by precautionary UCC financing statements with respect to any true lease permitted by this Agreement, and

(v) non-exclusive licenses and sublicenses granted by a Loan Party in the ordinary course of business.

For the avoidance of doubt, notwithstanding anything to the contrary herein, in no event shall any ERISA Lien be a Permitted Lien.

"Permitted Protest" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation has been established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, and (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 30 days after, the acquisition, construction or improvement of any assets for the purpose of financing or refinancing all or any part of the purchase price or cost of such acquisition, construction or improvement, in an aggregate principal amount outstanding at any one time not in excess of $1,000,000.

"Permitted Surety Bonds" means unsecured guaranties and reimbursement obligations incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guaranty and similar obligations in an aggregate amount not to exceed $100,000 at any time outstanding.

"Person" means each natural person, corporation, limited liability company, limited partnership, general partnership, limited liability partnership, joint venture, trust, land trust, business trust, or other entity or organization, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"PIK Interest" has the meaning specified therefor in Section 2.4(c)(ii) of this Agreement.

"PIK Rate" has the meaning specified therefor in the definition of Applicable Rate.

"Projections" means Borrowers' forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Borrowers' historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination, with respect to each Lender and such Lender's Term Loans (including such Lender's right to receive payments of principal, interest, fees and other amounts with respect to the Term Loans made by, or Obligations owing to, such Lender, and with respect to all computations and other matters related to the foregoing) the percentage that is obtained by dividing (i) the aggregate principal amount of the Term Loans of such Lender outstanding on such date by (ii) the aggregate principal amount of the Term Loans of all Lenders outstanding on such date.

"Property" means any interest in any kind of property or asset (other than cash), whether real, personal or mixed, and whether tangible or intangible.

"Protected CFC" means, with respect to any CFC, a CFC having only "United States shareholders" that are (i) "domestic corporations" (within the meaning Code Section 7701(a)(30)) classified as "C" corporations for all purposes of the Code (ii) eligible for and can actually take (without any loss or reduction of a material tax benefit) (x) the dividends received deduction under Section 245A of the Code with respect to any and all dividends actually received from such CFC and (y) a complete offset and reduction pursuant to Treasury Regulations Section 1.956-1(a)(2) against any and all inclusions under Sections 951(a)(1)(B) and 956 of the Code pursuant to Treasury Regulations Section 1.956 1.

"Public Lender" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties and their Subsidiaries that is held in Deposit Accounts or in Securities Accounts, or any combination thereof, that is the subject of a Control Agreement and is maintained by a branch office of the applicable bank or securities intermediary located within the United States.

"Qualified Equity Interests" means and refers to any Equity Interests issued by Administrative Borrower (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Real Property Collateral" means (a) the Real Property identified on Schedule R-1 to this Agreement, and (b) any fee-owned Real Property hereafter acquired by any Loan Party or one of its Subsidiaries with a fair market value in excess of $500,000.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Recapitalization Transaction Agreement" means that certain Transaction Agreement, dated as of August 7, 2019, by and among JAKKS, the Consenting Convertible Noteholders and the other persons party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Recapitalization Transactions" means, collectively, (a) (i) the execution and delivery of, and performance by each Loan Party of its Obligations under, the Loan Documents to which it is a party, including the creation and perfection of the Liens on the Collateral, and the payment of Closing Costs and all other fees, costs, expenses and disbursements required to be paid from time to time pursuant to any of the Loan Documents or in connection with the transactions contemplated thereby, (ii) the borrowing of the Term Loans and the use of proceeds thereof by the Borrowers and (iii) all other transactions consummated in connection with any of the foregoing, (b) the entry into, and the incurrence and performance of obligations under, the ABL Facility, and (c) all other transactions contemplated by, entered into, consummated in connection with, or relating to, the Recapitalization Transaction Agreement (including all mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions or other corporate or other transactions that the Loan Parties or any of their Affiliates determine to be necessary or appropriate to implement the Recapitalization Transaction Agreement).

"Reference Period" has the meaning set forth in the definition of EBITDA.

"Refinancing Indebtedness" means Indebtedness incurred in connection with refinancings, renewals, or extensions of Indebtedness otherwise constituting Permitted Indebtedness. so long as:

(a) the aggregate outstanding principal amount of such Indebtedness does not exceed the aggregate principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses reasonably incurred in connection therewith, and by the amount of existing unfunded commitments with respect thereto,

(b) such Indebtedness has a weighted average maturity (measured as of the date of such refinancing, renewal or extension) and maturity no shorter than that of the Indebtedness being refinanced, renewed or extended,

(c) such Indebtedness is not on terms or conditions that, taken as a whole, are or could reasonably be expected to be, materially adverse to the interests of the Lenders,

(d) to the extent that the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the Indebtedness incurred in connection with such refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness,

(e) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended and, in such case, to no greater extent,

(f) if the Indebtedness that is refinanced, renewed or extended was unsecured, the Indebtedness incurred in connection with such refinancing, renewal or extension shall be unsecured, and

(g) if the Indebtedness that is refinanced, renewed, or extended was secured by a Permitted Lien (i) the Indebtedness incurred in connection with such refinancing, renewal, or extension shall be secured by substantially the same or fewer (but in no event additional) categories of collateral as secured such refinanced, renewed or extended Indebtedness, in each case, on terms no less favorable to Agent or the Lender Group, (ii) the Liens securing the Indebtedness incurred in connection with such refinancing, renewal or extension shall not have a priority more senior than the Liens securing the Indebtedness that is refinanced, renewed or extended, and (iii) to the extent the Liens securing the Indebtedness being so refinanced, refunded, renewed or extended were subordinated to any Liens securing the Obligations, the Liens securing the Indebtedness incurred in connection with such refinancing, renewal or extension shall be subordinated at least to the same extent and in any event on terms no less favorable to Agent or the Lender Group.

"Register" has the meaning set forth in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of this Agreement.

"Related Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Related Person" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, investor, agent, counsel, consultant and insurance, environmental, legal, financial and other advisor and representative of or to such Person or any of its Affiliates.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the aggregate Term Loan Exposure of all Lenders.

"Requirement of Law" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Restricted Payment" means (a) any declaration or payment of any dividend or the making of any other payment or distribution (whether in cash, securities or other property, assets, rights or obligations), directly or indirectly, on account of Equity Interests issued by Administrative Borrower or any of its Subsidiaries (including any payment in connection with any merger or consolidation involving Administrative Borrower) or to the direct or indirect holders of Equity Interests issued by Administrative Borrower or any of its Subsidiaries in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Administrative Borrower or any of its Subsidiaries), or (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving Administrative Borrower) of any Equity Interests issued by Administrative Borrower or any of its Subsidiaries, (c) any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Administrative Borrower now or hereafter outstanding or (d) except in connection with Refinancing Indebtedness permitted by Section 6.1, any optional prepayment, redemption, defeasement, repurchase or other acquisition (whether in cash, securities or other property, assets, rights or obligations) of Subordinated Indebtedness.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"Scheduled Provisions" has the meaning set forth on Schedule S hereto.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Secured Party" means, without duplication, each of Agent, each Lender, each Indemnified Person and each other holder of any Obligation of a Loan Party.

"Securities Account" means a securities account (as that term is defined in the UCC).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Series A Preferred Stock" means 200,000 shares of Series A Preferred Stock issued by JAKKS on the Closing Date on the terms set forth in the "Certificate of Designations of the New Preferred Stock".

"Solvent" means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Subject Holder" has the meaning specified therefor in Section 2.8(b)(ii) of this Agreement.

"Subordinated Indebtedness" means (a) the Convertible Notes and (b) any Indebtedness of any Loan Party or its Subsidiaries incurred from time to time after the Closing Date that is subordinated in right of payment to the Obligations and is subject to a Subordination Agreement or contains terms and conditions of subordination that are acceptable to Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Obligations and the ABL Facility do not constitute Subordinated Indebtedness. As of the Closing Date, there is no Subordinated Indebtedness other than the Convertible Notes.

"Subordinated Indebtedness Documents" means, collectively, the documents evidencing the Subordinated Indebtedness, if any.

"Subordination Agreement" means any subordination agreement by and among Agent, Loan Parties and the issuer of any Subordinated Indebtedness on terms and conditions reasonably satisfactory to the Agent or the Required Lenders, as the same may be amended, restated, amended and restated, supplemented and/or modified from time to time subject to the terms thereof. For purposes of this definition, the Intercreditor Agreement is not a Subordination Agreement.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Term Loan" means each term loan made by a Lender to any Borrower pursuant to this Agreement (including each term loan made on the Closing Date and each Incremental Term Loan made pursuant to any Incremental Facility Amendment after the Closing Date).

"Term Loan Commitment" means, with respect to each Lender, its commitment to make a Term Loan to the Borrowers in the aggregate principal amount set forth beside such Lender's name under the applicable heading on Schedule C-1 to this Agreement (as the same may be amended to reflect any Lender's commitment to make Incremental Term Loans in accordance with Section 2.13). The aggregate amount of Term Loan Commitments of all Lenders on the Closing Date (immediately prior to the funding of the Term Loans on the Closing Date) is $134,801,239.38.

"Term Loan Incurrence Conditions" means the conditions precedent to the Closing (as defined in the Recapitalization Transaction Agreement), as set forth in the Recapitalization Transaction Agreement (including payment of the New Money Investment (as defined in the Recapitalization Transaction Agreement)).

"Termination Date" means the earliest to occur of (i) the Maturity Date, (ii) the date that is 91 days prior to the maturity of the Oasis Convertible Notes or (iii) the date on which the Obligations become due and payable pursuant to the terms of this Agreement.

"Title IV Plan" means an employee pension benefit plan within the meaning of ERISA Section 3(2) that is subject to Title IV of ERISA, other than a Multiemployer Plan, to which any Loan Party or any of its Subsidiaries incurs or otherwise has or could reasonably be expected to have any obligation or liability, contingent or otherwise, including as a result of an ERISA Affiliate.

"Tollytots Limited" means Tollytots Limited, a company incorporated in Hong Kong with registered number 1251086.

"Trademark Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"UCC" means the New York Uniform Commercial Code, as in effect from time to time.

"United States", "US" and "U.S.", as applicable, means the United States of America.

"US Loan Party" means a Loan Party that is organized under the laws of the United States, any state thereof or the District of Columbia.

"U.S. Tax Compliance Certificate" means a certificate substantially in the form of Exhibit T-1, T-2, T-3 or T-4, as applicable.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. **Accounting Terms**.

(a) All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred.

(b) When used herein, the term "financial statements" shall include the notes and schedules thereto. All references to a (i) "fiscal year" shall be references to the fiscal year ending on December 31 and (ii) "fiscal quarter" shall be references to the quarterly accounting periods of the Loan Parties and their consolidated Subsidiaries, ending on March 31, June 30, September 30, and December 31 of each year.

(c) Whenever the term "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean the Loan Parties and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (A) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (B) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit (other than any qualification (x) relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by such accountants, (y) as a result of an impending maturity date of any Indebtedness or (z) any potential inability to satisfy any financial covenant on a future date or in a future period) and (iii) to the extent that any change in GAAP after the Closing Date results in any lease which is, or would be, classified as an operating lease under GAAP as it exists on the Closing Date being classified as a capital lease under revised GAAP, such change in classification of leases from operating leases to capital leases shall be ignored for purposes of this Agreement.

1.3. **Uniform Commercial Code**. Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

1.4. **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, restatements, amendments and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, restatements, amendments and restatements, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" (whether capitalized or otherwise) shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, whether real, personal or mixed, and including cash, securities, accounts and contract rights. The words "liability" and "liabilities" shall be construed broadly to include all claims, actions, suits, judgments, damages, losses, liabilities, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the outstanding principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Term Loans, (ii) all Lender Group Expenses required to be paid hereunder that have accrued and are unpaid (other than unasserted contingent indemnification or unasserted expense reimbursement obligations), and (iii) all fees or charges that have accrued hereunder or under any other Loan Document and are unpaid, (b) [reserved], (c) [reserved], (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations (other than unasserted contingent indemnification or unasserted expense reimbursement obligations) for which a claim or demand for payment has been made in writing on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations other than unasserted contingent indemnification obligations, and (f) the termination of all of the Term Loan Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Pacific standard time or Pacific daylight saving time, as in effect in Los Angeles, California on such day. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6. **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference

1.7. **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

2. LOANS AND TERMS OF PAYMENT.

2.1. **Term Loans**.

(a) Subject to the terms and conditions of this Agreement and the Recapitalization Transaction Agreement, and in reliance upon the representations and warranties of the Loan Parties contained herein and therein, each Lender (severally, and not jointly or jointly and severally with any other Lender) agrees to make a Term Loan to Borrowers on the Closing Date in the aggregate principal amount equal to such Lender's Term Loan Commitment.

(b) By executing and delivering this Agreement, each Lender and the Borrowers agree, and the Agent acknowledges, (i) that Term Loans shall be deemed to have been made by such Lender, and Obligations in respect thereof incurred by the Borrowers, on the Closing Date concurrently with, and automatically upon, satisfaction of the Term Loan Incurrence Conditions (for the avoidance of doubt, without the requirement for any cash or other funds to be provided to the Agent by such Lender hereunder); provided, that delivery by the Administrative Borrower of the Closing Certificate shall be conclusive evidence of the such satisfaction and the Agent shall have no obligation to verify any Lender's compliance with any terms of the Recapitalization Transaction Agreement or take any other action in connection with the making of the Term Loans hereunder, (ii) no Lender shall be responsible for the failure of any other Lender to make any Term Loan required to be made hereunder by such other Lender and (iii) such Lender's agreement to make a Term Loan to the Borrowers as provided in Section 2.1(a) shall be deemed satisfied, and its Term Loan Commitments shall expire, immediately and automatically upon such Lender's Term Loans being deemed funded in accordance with the foregoing.

(c) Amounts borrowed as Term Loans that are repaid or prepaid (whether any such payment is voluntary, scheduled or mandatory) may not be reborrowed.

(d) The Borrowers and the Lenders each agree (a) that the Term Loans shall be treated as debt for United States federal income tax purposes and (b) to adhere to this Section 2.1(d) for U.S. federal income tax purposes and not to take any action or file any tax return, report or declaration inconsistent with the foregoing. **EACH TERM LOAN IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE CODE., AND EACH LENDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, AND YIELD TO MATURITY OF THE TERM LOANS HELD BY IT BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE CHIEF FINANCIAL OFFICER OF THE ADMINISTRATIVE BORROWER IN ACCORDANCE WITH SECTION 11**. The inclusion of this Section 2.1(d) is not an admission by any Lender that it is subject to U.S. taxation.

2.2. **Evidence of Debt**. Any Lender may request that the Term Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender substantially in the form attached hereto as Exhibit B. Thereafter, the Term Loans evidenced by such promissory notes and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein.

2.3. **Loan Account**. Agent (or an agent or sub-agent appointed by it) (as a non-fiduciary agent on behalf of Borrowers) shall maintain an account or register on its books (the "Loan Account") showing, among other things recorded thereon in accordance with the Agent's practices, (i) the names and addresses of the Lenders, (ii) the principal amounts (and stated interest) of the Term Loans owing to each Lender, (iii) the amount of payment Obligations owing to each Lender (including accrued interest, fees and expenses (including Lender Group Expenses)) and the due date thereof and (iv) the amount of any payment (including prepayment) made by the Borrowers in respect of any Obligations and the date of such payment. Recordations made by the Agent in the Loan Account shall be conclusive and binding on the Loan Parties and each Lender, absent manifest error; provided, that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's rights with respect to its Term Loans or the Loan Parties' Obligations to any Lender. The Borrowers hereby agree that, to the extent the Agent serves as the Borrowers' non-fiduciary agent for purposes of maintaining the Loan Account, the Agent and its Related Persons shall constitute "Indemnitees".

2.4. **Interest**.

(a) **Interest Rates**. Except as otherwise provided herein, the Term Loans shall bear interest on the unpaid principal amount thereof from the date made until repaid in full (whether by acceleration or otherwise) at the Applicable Rate; provided, that at the election of Agent or the Required Lenders while any Event of Default exists and is continuing (or automatically while an Event of Default under Section 8.1, 8.4 or 8.5 exists), the Borrowers shall pay interest on the outstanding principal amount of the Term Loans and the overdue amount (if any) of any other Obligations at the Default Rate (such Default Rate interest, the "Default Interest").

(b) **Maximum Lawful Rate**. Anything herein to the contrary notwithstanding, the obligations of Borrowers hereunder are subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event Borrowers shall pay such Lender interest at the highest rate permitted by applicable law ("Maximum Lawful Rate"); provided, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

(c) **Interest Payments**.

(i) Interest on the Term Loan shall be paid in arrears on each Interest Payment Date; provided, that, all Default Interest shall be payable promptly upon (but in any event no later than three (3) Business Days after) demand.

(ii) All Default Interest (other than the amount thereof calculated by reference to the PIK Rate component of the Applicable Rate portion of the Default Rate) and the amount of interest accruing on the outstanding principal of Term Loans calculated solely by reference to the Cash Rate component of the Applicable Rate shall, in each case, be paid in cash in immediately available funds, and shall be deemed paid by the Borrowers upon receipt of the same by the Agent at its Account. All interest accruing on the outstanding principal of Term Loans calculated solely by reference to the PIK Rate component of the Applicable Rate shall be paid "in kind", by increasing the then-outstanding principal amount of the Term Loans by (and capitalizing and compounding) the amount of such interest (such interest "PIK Interest"), and such PIK Interest shall be deemed paid once a record of the applicable increase to the outstanding principal amount of Term Loans has been recorded by the Agent in the Loan Account; provided, that, once paid and capitalized in accordance with the foregoing, (x) all future interest payments and all other amounts determined by reference to the principal amount of Term Loans shall be calculated by reference to the outstanding principal amount of Term Loans "pro forma" for such capitalization and (y) all references to payments or repayments of principal shall be construed as referring to the principal amount of Term Loans "pro forma" for such capitalization.

(d) **Computation**. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue.

2.5. **Lender Group Expenses**. The Borrowers promise to pay all Lender Group Expenses. All accrued and unpaid Lender Group Expenses shall be payable by the Borrowers in cash not later than the 30th day after the date on which an invoice therefor is delivered by Agent to Administrative Borrower. Borrowers agree that their obligations contained in this Section 2.5 shall survive the resignation of the Agent, the replacement of any Lender, the repayment, satisfaction or discharge of all other Obligations and the termination or discharge of the Loan Documents.

2.6. **Promise to Pay**. Subject to Section 2.5 and except to the extent expressly required to be paid on another date, Borrowers unconditionally promise to pay all outstanding Term Loans and all other outstanding Obligations in full on the Termination Date.

2.7. **Payments Generally; Pro Rata Treatment; Apportionment; Application; Prepayments**.

(a) Payments by Borrowers.

All payments (including prepayments) required to be made by Borrowers or any other Loan Party under the Loan Documents or otherwise on account of the Obligations shall be made (x) without set off, recoupment, counterclaim or deduction of any kind, (y) to Agent's Account and (z) by wire transfer in immediately available funds, no later than 2:30 p.m. (New York City time) on the date due. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 2:30 p.m. (New York City time). If any payment item is received into Agent's Account on a non-Business Day or after 2:30 p.m. (New York City time) on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day, and any applicable interest or fee shall continue to accrue until such following Business Day. If any payment is due hereunder on a day that is not a Business Day, such payment shall be deemed to be due on the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day. Each Loan Party hereby irrevocably waives the right to direct the application of any and all payments in respect of any Obligation and, during the continuance of a Default or Event of Default, any proceeds of Collateral.

(b) **Pro Rata Shares; Apportionment and Application**.

(i) All payments (including prepayments) made by the Loan Parties, and all other amounts (including all proceeds of Collateral) received by the Agent, with respect to, or on account of, any Obligations owed to the Lenders shall be allocated among the Lenders ratably, in proportion to their respective Pro Rata Shares. Except as expressly provided, whenever a provision in any Loan Document refers to a payment being made to the Lenders or on account of the Term Loans or other Obligations owed to the Lenders, such payment shall be made in accordance with this Section 2.7(b)(i). All payments in respect of the principal amount of the Term Loans shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid (calculated up to the date of such payment).

(ii) All voluntary and mandatory prepayments of the principal amount of Term Loans shall be for the account of the Lenders and apportioned among the Lenders in accordance with their Pro Rata Share of the aggregate amount of Term Loans outstanding on such date.

(iii) At any time that an Application Event has occurred and is continuing, all payments (including all prepayments) remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay Obligations owing to the Agent in its capacity as Agent (including all Lender Group Expenses (including cost or expense reimbursements) and indemnities due to Agent), until paid in full;

(B) second, ratably, to pay Lender Group Expenses (including cost or expense reimbursements) or indemnities) then due to the Lenders under the Loan Documents, until paid in full;

(C) third, ratably, to pay accrued and unpaid interest in respect of the Term Loans, until paid in full;

(D) fourth, ratably, to pay the principal of all outstanding Term Loans, until paid in full;

(E) fifth, to pay all other outstanding Obligations, until paid in full; and

(F) sixth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iv) So long as no Application Event has occurred and is continuing, each payment made by Borrowers to Agent and specified by Borrowers to be for the payment of any specific type of Obligation (other than the principal of the Term Loans) then due and payable or prepayable shall be applied in satisfaction of such Obligation.

(v) References in this Agreement or any other Loan Document to "payment in full" (or similar construct) with respect to any type of Obligation shall be construed as references to payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements (other than unasserted contingent indemnification and unasserted expense reimbursement obligations (including with respect to Lender Group Expenses)), irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

2.8. **Prepayments**.

(a) **Optional Prepayments of Term Loans**. Borrowers may prepay the principal of any Term Loan at any time in whole or in part, without premium or penalty; provided, that the Administrative Borrower shall deliver a written notice of such prepayment to the Agent not later than 2:30 p.m. (New York City time) one (1) Business Day prior to the date of such prepayment.

(b) **Mandatory Prepayments**.

(i) Within one Business Day of the date of receipt by any Loan Party or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or disposition of assets of any Loan Party or any of its Subsidiaries (including Net Cash Proceeds of insurance or arising from casualty losses or condemnations and payments in lieu thereof, but excluding Net Cash Proceeds from sales or dispositions which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (j), (k), (l), (m) or (n) of the definition of Permitted Dispositions), Borrowers shall prepay the outstanding principal amount of the Term Loans in accordance with Section 2.7 in an amount equal to 100% of such Net Cash Proceeds received by such Person in connection with such sales or dispositions; provided, that so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) Borrowers shall have given Agent prior written notice of Borrowers' intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such sale or disposition or the cost of purchase or construction of other assets useful in the business of such Loan Party or its Subsidiaries, (C) the monies are held in a Deposit Account in which Agent has a perfected security interest, and (D) such Loan Party or its Subsidiary, as applicable, completes such replacement, purchase, or construction within 180 days after the initial receipt of such monies, then the Loan Party or such Loan Party's Subsidiary whose assets were the subject of such disposition shall have the option to apply such monies to the costs of replacement of the assets that are the subject of such sale or disposition unless and to the extent that such applicable period shall have expired without such replacement, purchase, or construction being made or completed, in which case, any amounts remaining in the Deposit Account referred to in clause (C) above shall be paid to Agent and applied in accordance with Section 2.7; provided, that no Loan Party nor any of its Subsidiaries shall have the right to use such Net Cash Proceeds to make such replacements, purchases, or construction in excess of $1,000,000 in any given fiscal year. Nothing contained in this Section 2.8(b) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4. Notwithstanding the foregoing, to the extent that the Borrowers or any of their Subsidiaries receive Net Cash Proceeds attributable to ABL Priority Collateral (as defined in the Intercreditor Agreement), the amount of such Net Cash Proceeds attributable to such ABL Priority Collateral shall, to the extent required by the Intercreditor Agreement so long as the ABL Facility is in effect, not be required to be applied towards the Obligations but shall instead, to the extent required by the ABL Facility and the Intercreditor Agreement, be applied to prepay obligations under the ABL Facility in accordance with the ABL Credit Agreement and the Intercreditor Agreement.

(ii) **Equity**. Within one Business Day of the date of the date of receipt by any Loan Party or any of its Subsidiaries of Net Cash Proceeds from the issuance or sale by any Loan Party or any of its Subsidiaries of any Equity Interests (other than (A) in the event that any Loan Party or any of its Subsidiaries forms any Subsidiary in accordance with the terms hereof, the issuance by such Subsidiary of Equity Interests to such Loan Party or such Subsidiary, as applicable, (B) the issuance of Equity Interests by Administrative Borrower to any Person that is an equity holder of Administrative Borrower prior to such issuance (a "Subject Holder") so long as such Subject Holder did not acquire any Equity Interests of Administrative Borrower so as to become a Subject Holder concurrently with, or in contemplation of, the issuance of such Equity Interests to such Subject Holder, (C) [reserved], (D) the issuance of Equity Interests of Administrative Borrower to directors, officers and employees of Administrative Borrower and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors, (E) the Series A Preferred Stock, and (F) the issuance of Equity Interests by a Subsidiary of a Loan Party to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (A) – (E) above), Borrowers shall prepay the outstanding principal amount of the Term Loans in accordance with Section 2.7 in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such issuance. The provisions of this Section 2.8(b)(ii) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement. Notwithstanding the foregoing, to the extent that (but only for so long as) the Intercreditor Agreement prohibits the application of Net Cash Proceeds of issuances of Equity Interests towards payment of the Obligations prior to the Discharge of ABL Obligations, the amount of such Net Cash Proceeds shall not be required to be applied towards the Obligations as set forth above but shall instead be applied to prepay obligations under the ABL Facility in accordance with the ABL Credit Agreement and the Intercreditor Agreement.

(iii) **Indebtedness**. Within one (1) Business Day of the date of receipt by any Loan Party or any of its Subsidiaries of Net Cash Proceeds from the issuance of any debt securities or the issuance or incurrence of any other Indebtedness (other than Net Cash Proceeds of any Permitted Indebtedness), the Administrative Borrower shall notify the Agent in writing thereof and Borrowers shall prepay the outstanding principal amount of the Obligations in an amount equal to 100% of such Net Cash Proceeds. For the avoidance of doubt, nothing contained in this Section 2.8 shall permit (or be construed as permitting or constituting implied consent in respect of) any Disposition, issuance or incurrence by any Loan Party or any of its Subsidiaries of any Equity Interests or any Indebtedness, other than, in each case, solely to the extent made in accordance with Article 6. Notwithstanding the foregoing, to the extent that (but only for so long as) the Intercreditor Agreement prohibits the application of Net Cash Proceeds attributable to such Indebtedness towards payment of the Obligations prior to the Discharge of ABL Obligations, the amount of such Net Cash Proceeds attributable to such Indebtedness shall not be required to be applied towards the Obligations as set forth above but shall instead be applied to prepay obligations under the ABL Facility in accordance with the ABL Credit Agreement and the Intercreditor Agreement.

(c) **Notice of Mandatory Prepayment**. Administrative Borrower shall provide written notice of any mandatory prepayment of the Obligations required to be made pursuant to Section 2.8(b) by at least 2:30 p.m. (New York City time) one Business Day prior to the proposed prepayment date, which notice shall state pursuant to which paragraph of Section 2.8(b) the prepayment is being made.

(d) **Application of Payments**. Each optional prepayment and each mandatory prepayment made pursuant to this Section 2.8 shall by applied in the manner set forth in Section 2.7.

2.9. **Fees**.

(a) **Agent Fees**. Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Field Examination and Other Fees**. Subject to any limitations set forth in Section 5.7(c), Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, on or prior to the 30th day after the date on which an invoice therefor is delivered by Agent to Administrative Borrower, as follows (i) a fee of $1,000 per day, per examiner, *plus* reasonable and documented out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Loan Party performed by or on behalf of Agent, and (ii) the reasonable and documented out-of-pocket fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the Collateral, or any portion thereof, or to assess any Loan Party's or its Subsidiaries' business valuation.

2.10. **Increased Costs; Capital Requirements**.

(a) **Compensation For Increased Costs and Taxes**. In the event that any Lender shall determine (which determination shall be set forth in a certificate of such Lender setting forth the calculation thereof in reasonable detail and shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law: (i) subjects such Lender (or its applicable lending office) or any company controlling such Lender to any additional Tax (other than any Excluded Tax or Indemnified Tax) with respect to this Agreement or any of the other Loan Documents or any of its obligations hereunder or thereunder, any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder, or its deposits, reserves, other liabilities or capital attributable thereto; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender's obligations hereunder; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder, or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrowers shall pay to such Lender promptly upon (but in any event not later than 30 days after) receipt of the statement referred to in the next sentence, such additional amount or amounts as may be necessary to compensate such Person for any such increased cost or reduction in amounts received or receivable hereunder.

(b) **Capital Adequacy**. In the event that any Lender shall determine (which determination shall be set forth in a certificate of such Lender setting forth the calculation thereof in reasonable detail and shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (i) any change in any Capital Adequacy Regulation or other Change in Law, (ii) any interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (ii) compliance by such Lender, or any Person controlling such Lender (including any parent bank holding company), with any Capital Adequacy Regulation affects the amount of capital required or expected to be maintained by such Lender or any Person controlling such Lender and (taking into consideration such Lender's or such Person's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of this Agreement, then, within 30 days of demand by such Lender (with a copy to Agent), Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender (or the Person controlling such Lender) on an after-tax basis for such increase. Notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines or directives thereunder or issued in connection therewith, shall be deemed to be a change in a Capital Adequacy Regulation for purposes of this Agreement, irrespective of the date enacted, adopted or issued.

(c) **Availability; Delay in Requests**. Notwithstanding anything herein to the contrary, the protection of this Section 2.10 shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for the Lenders affected thereby to comply therewith. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate a Lender pursuant to this Section 2.10 for any increased costs incurred or reductions suffered more than 180-days prior to the date that such Lender notifies Administrative Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

2.11. **Joint and Several Liability of Borrowers**.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.11), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.11 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.11(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Term Loans, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender Group, including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.11 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.11, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.11 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.11 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent or any other member of the Lender Group may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.11 are made for the benefit of Agent, each member of the Lender Group, and their respective successors and permitted assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, or any of their successors or permitted assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.11 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied (including contingent obligations). If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.11 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.11, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent, any other member of the Lender Group, against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group, and shall forthwith be paid to Agent to be credited and applied to the Obligations in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

(i) Each of the Borrowers hereby acknowledges and affirms that it understands that, to the extent the Obligations are secured by Real Property located in California, the Borrowers shall be liable for the full amount of the liability hereunder notwithstanding the foreclosure on such Real Property by trustee sale or any other reason impairing such Borrower's right to proceed against any other Loan Party. In accordance with Section 2856 of the California Civil Code or any similar laws of any other applicable jurisdiction, each of the Borrowers hereby waives until such time as the Obligations have been paid in full:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Borrowers by reason of Sections 2787 to 2855, inclusive, 2899, and 3433 of the California Civil Code or any similar laws of any other applicable jurisdiction;

(ii) all rights and defenses that the Borrowers may have because the Obligations are secured by Real Property located in California, meaning, among other things, that: (A) Agent, the other members of the Lender Group may collect from the Borrowers without first foreclosing on any real or personal property collateral pledged by any Loan Party, and (B) if Agent, on behalf of the Lender Group, forecloses on any Real Property Collateral pledged by any Loan Party, (1) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) the Lender Group may collect from the Loan Parties even if, by foreclosing on the Real Property Collateral, Agent or the other members of the Lender Group have destroyed or impaired any right the Borrowers may have to collect from any other Loan Party, it being understood that this is an unconditional and irrevocable waiver of any rights and defenses the Borrowers may have because the Obligations are secured by Real Property (including any rights or defenses based upon Sections 580a, 580d, or 726 of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction); and (iii) all rights and defenses arising out of an election of remedies by Agent, the other members of the Lender Group, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Obligations, has destroyed the Borrowers' rights of subrogation and reimbursement against any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction or otherwise.

2.12. **Incremental Term Loans**.

(a) The Borrowers may, at any time or from time to time (including on one or more occasions) after the Closing Date but prior to the Termination Date, by notice to the Agent (for delivery to the Lenders), request additional credit extensions in the form of one or more increases of the Term Loans existing on the date of such request or one or more additional tranches of term loans issued under this Agreement (as amended by any Incremental Facility Amendment in accordance with this Section 2.12) (each such increase or additional tranche, the "Incremental Term Loans"); provided, that, after giving effect to the incurrence of any Incremental Term Loans, the aggregate principal amount of outstanding Term Loans shall not exceed 120% of the aggregate Term Loan Commitments of the Lenders in effect on the Closing Date; provided, further, that, (i) the opportunity to provide such Incremental Term Loans shall be offered to each existing Lender in accordance with its Pro Rata Share of the outstanding Term Loans (but no Lender shall be obligated to provide any Incremental Term Loans unless it so agrees), (ii) after giving effect to the funding of any such Incremental Term Loans, no Default or Event of Default shall exist or be continuing and (iii) the terms and conditions applicable to such Incremental Term Loans (including the Applicable Rate and the Maturity Date), if requested to be different to the terms and conditions applicable to Term Loans outstanding at the time of such request, shall be satisfactory to each Person that is a Lender immediately prior to the incurrence of any Incremental Term Loans (in addition to each Person that elects to provide such Incremental Term Loans).

(b) If any existing Lender declines (or does not elect) to provide any Incremental Term Loans within ten (10) days of the Borrowers' request made in accordance with clause (a) above (such date, the "Incremental Term Loan Offer Acceptance Date"), the principal amount of Incremental Term Loans offered to such Lender shall instead be offered to other existing Lenders in accordance with their Pro Rata Shares; provided, that, any existing Lender may elect to provide more than its Pro Rata Share of any Incremental Term Loans with the consent of the other existing Lenders. If, notwithstanding the foregoing, existing Lenders do not elect to provide such amount of Incremental Term Loans as are requested by the Borrowers within five (5) days of such the Incremental Term Loan Offer Acceptance Date, such amount of Incremental Term Loans may, subject to the prior consent of such existing Lenders, instead be made by any other Person (each, an "Additional Lender"). Commitments in respect of Incremental Term Loans shall become Term Loan Commitments under this Agreement pursuant to an amendment (an "Incremental Facility Amendment") to this Agreement, executed by the Agent, the Borrowers, each Lender agreeing to provide such Incremental Term Loans and such number of existing Lenders (if any) as is required under Section 14.1 in connection with any amendments to this Agreement resulting from the establishment of such Incremental Term Loans (if any), as well as any amendments to any other Loan Documents, in each case, made in accordance with Section 14.1 and the amendment provisions applicable to such other Loan Documents. Any Incremental Term Loans shall be evidenced by one or more entries in the Register maintained by the Agent. In connection with the foregoing, to the extent reasonably requested by the Lenders providing the Incremental Term Loans or by the Agent, the Agent shall receive board resolutions, officers' certificates, legal opinions and other materials reasonably consistent with those delivered on the Closing Date under Section 3.1.

(c) Unless otherwise specifically provided herein or in the applicable Incremental Facility Amendment, (i) all references in this Agreement and any other Loan Document to Term Loans shall be deemed to include Incremental Term Loans made pursuant to this Section 2.12, and such Incremental Term Loans shall constitute Term Loans, and (ii) all Incremental Term Loans shall, except to the extent agreed to by the Persons providing such Incremental Term Loans, be entitled to all the benefits afforded by this Agreement and the other Loan Documents and benefit equally and ratably from any guarantees and the security interests created by the Loan Documents.

3. **CONDITIONS; TERM OF AGREEMENT.**

3.1. **Conditions Precedent to the Effectiveness and Making of Term Loans**. The effectiveness of this Agreement and the obligation of each Lender to make the Term Loans hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender (or written waiver in accordance with Section 14.1), of each of the conditions precedent set forth on Schedule 3.1 to this Agreement (provided, that each Lender that delivers its signature to this Agreement to the Agent and confirms that such signature may be released by the Agent on its behalf shall conclusively be deemed to have confirmed satisfaction or waiver of the conditions precedent).

3.2. **Effect of Maturity or Termination Date**. On the Termination Date, all of the Obligations immediately shall become due and payable, without notice or demand, and Borrowers shall be required to repay all of the Obligations in full in cash. No termination of the obligations of the Lender Group (other than payment in full of the Obligations) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations have been paid in full in cash, Agent's Liens on the Collateral shall be automatically released and discharged and Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to evidence the release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

4. **REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lender Group to enter into this Agreement and to induce the Lenders to make the Term Loans, each Borrower makes the following representations and warranties to the Lender Group, each of which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date), and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries**.

(a) Each Loan Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified and licensed to do business in each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license, except to the extent the failure to be so qualified or licensed could not reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) is, as of the Closing Date, a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding (including the owner thereof).

(c) Set forth on Schedule 4.1(c) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by such Loan Party. All of the outstanding Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(d) to this Agreement, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's or any of its Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. Except as set forth on Schedule 4.1(d), no Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

4.2. **Due Authorization; No Conflict**.

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or other organizational action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate (x) any material provision of federal, state, or local law or regulation applicable to such Loan Party, (y) the Governing Documents of such Loan Party, or (z) any material order, judgment, or decree of any court or other Governmental Authority binding on such Loan Party, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material agreement of such Loan Party where any such conflict, breach or default could individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of such Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3. **Governmental Consents**. The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than (i) registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date and (iii) registrations, consents, approvals, notices or other actions which the failure to obtain, make or take could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.4. **Binding Obligations; Perfected Liens**.

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto, and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Agent's Liens are validly created and perfected (other than with respect to Collateral in which Agent's Lien is not required to be perfected under the Loan Documents) first priority Liens, subject only to Permitted Liens which are not required under the terms of the Loan Documents to be subordinated to Agent's Liens and subject to the lien priorities set forth in the Intercreditor Agreement.

4.5. **Title to Assets; No Encumbrances**. Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6. **Litigation**.

(a) There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, threatened in writing against a Loan Party or any of its Subsidiaries that (i) either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect or (ii) purport to affect or pertain to any Loan Document or any Recapitalization Transactions.

(b) Schedule 4.6(b) to this Agreement sets forth a complete and accurate description of each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $100,000 that, as of the Closing Date, is pending or, to the knowledge of any Borrower, threatened against a Loan Party or any of its Subsidiaries.

4.7. **Compliance with Laws**. No Loan Party nor any of its Subsidiaries (a) is in violation of any Requirement of Law (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8. **No Material Adverse Effect**. All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since December 31, 2018, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect.

4.9. **Solvency**.

(a) The Loan Parties are Solvent on a consolidated basis and taken as a whole.

(b) Each Borrower is Solvent.

(c) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.10. **Employee Benefits; ERISA Compliance**. Schedule 4.10 sets forth, as of the Closing Date, a complete and accurate list of, and separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans, (c) all OPEB Plans that could reasonably be expected to result in material liability, individually or in the aggregate with other OPEB Plans, and (d) all Benefit Plans intended to be tax-qualified under Section 401 of the Code. Each Benefit Plan, and each trust thereunder, (i) intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies and (ii) is in compliance in all material respects with applicable provisions of ERISA, the Code and other Requirements of Law. Except for those that would not reasonably be expected to result in liabilities in excess of $1,000,000, there are no existing or pending (or to the knowledge of any Loan Party, threatened in writing) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Loan Party or any of its Subsidiaries incurs or otherwise has or could have an obligation or any liability. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, resulted in or could reasonably be expected to result in liabilities in excess of $1,000,000 or the imposition of a Lien on any assets of any Loan Party or any of its Subsidiaries. No Loan Party nor any Subsidiary of a Loan Party nor any ERISA Affiliate has any liabilities with respect to any OPEB Plan that could reasonably be expected to result in material liability, individually or in the aggregate with other OPEB Plans.

4.11. **Environmental Condition**. Except as set forth on Schedule 4.11 to this Agreement, (a) to each Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12. **Complete Disclosure**. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents is, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, when furnished and taken as a whole, true and accurate, in all material respects, on the date as of which such information is dated or certified and does not and will not, when furnished and taken as a whole, omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, in each case, after giving effect to all supplements and updates thereto subsequent to the date on which such information was dated, certified or furnished. The Projections delivered to Agent on May 20, 2019 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.13. **Patriot Act**. To the extent applicable, the Loan Parties and their Subsidiaries are in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act") and (c) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Term Loan will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

4.14. **Indebtedness**. Set forth on Schedule 4.14 to this Agreement is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.15. **Payment of Taxes**. All material Tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed with the appropriate Governmental Authority and all material Taxes shown on such Tax returns to be due and payable and all other material Taxes upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Borrower knows of any proposed Tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided, that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor. Proper and accurate amounts have been withheld by each Loan Party and its Subsidiaries from their respective employees for all periods in compliance in all material respects with the Tax, social security and unemployment withholding provisions of applicable requirements of Law and such withholdings have been timely paid to the respective governmental authorities. No Loan Party or any Subsidiary of any Loan Party has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b) or is a member of an affiliated, combined or unitary group other than the group of which a Loan Party is the common parent.

4.16. **Margin Stock**. No Loan Party nor any of its Subsidiaries owns (or expects to acquire) any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loans will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors.

4.17. **Governmental Regulation**. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Loan Party or any of its Subsidiaries is in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws. No Loan Party nor any of its Subsidiaries nor, to the knowledge of any Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Term Loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender or other individual or entity participating in any transaction).

4.19. **Employee and Labor Matters**. There is (i) no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no arbitration proceeding pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000, (ii) no strike, labor dispute, slowdown, lockouts, stoppage or similar action pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries that could reasonably be expected to result liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000, or (iii) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Loan Party or any Subsidiary thereof, and, to the knowledge of any Loan Party, no union (or similar) petition pending with respect to the employees of any Loan Party or its Subsidiaries and no union (or similar) organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries, in each case in connection with their employment by any Loan Party or its Subsidiaries. None of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The (x) hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act and (y) Loan Parties and their Subsidiaries are in compliance with all Requirements of Law with respect to the employment of any of their employees, except, in each case, to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000. All payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in liabilities to any Loan Party or its Subsidiaries, individually or in the aggregate, in excess of $500,000.

4.20. **No Default**. No Loan Party and no Subsidiary is in default under or with respect to any Material Contract.

4.21. **Leases**. In each case except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.22. **Brokers' Fees; Transaction Fees**. Except for fees payable to Agent, the Lenders (or their Related Persons), and (without duplication of the foregoing) except to the extent constituting Closing Costs, none of Loan Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the Recapitalization Transactions on the Closing Date.

4.23. **Notes Documents**. Borrowers have delivered to Agent a complete and correct copy of the Notes Documents, including all schedules and exhibits thereto, executed on the Closing Date. The execution, delivery and performance of each of the Notes Documents has been duly authorized by all necessary action on the part of each Borrower who is a party thereto. Each Notes Document is the legal, valid and binding obligation of each Borrower who is a party thereto, enforceable against each such Borrower in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

4.24. **ABL Loan Documents**. Borrowers have delivered to Agent a complete and correct copy of the ABL Loan Documents, including all schedules and exhibits thereto, executed on the Closing Date. The execution, delivery and performance of each of the ABL Loan Documents has been duly authorized by all necessary action on the part of each Borrower who is a party thereto. Each ABL Loan Document is the legal, valid and binding obligation of each Borrower who is a party thereto, enforceable against each such Borrower in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

4.25. **Insurance.** Schedule 4.25 lists all insurance policies of any nature maintained by the Loan Parties, as of the Closing Date, including issuers, coverages and deductibles. Each Loan Party and each of its Subsidiaries and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses of the same size and character as the business of Loan Parties and, to the extent relevant, owning similar properties in localities where such Person operates.

4.26. **Location of Inventory**. Except as set forth in Schedule 4.26, the Inventory of Loan Parties and their Subsidiaries is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on Schedule 4.26 to this Agreement (as such Schedule may be updated pursuant to Section 5.14).

4.27. **HK Collateral Documents**.

(a) No Filing or Stamp Taxes. Except for registration fees associated with the registration of the HK Collateral Documents at the Hong Kong Companies Registry, there are no Requirements of Law for the HK Collateral Documents to be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the HK Collateral Documents or the transactions contemplated by the HK Collateral Documents.

(b) Ranking of Collateral. The Collateral under the HK Collateral Documents has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Collateral, other than as may be granted in favor of the Agent and the Lenders from time to time.

(c) Ownership. The entire issued share capital of JAKKS HK is legally and beneficially owned and controlled by JAKKS. The entire issued share capital of each HK Loan Party (other than JAKKS HK) is legally and beneficially owned and controlled (directly or indirectly) by JAKKS HK. The shares in the capital of each HK Loan Party are fully paid and are not subject to any option to purchase or similar rights.

(d) Legal and Beneficial Ownership. Each HK Loan Party is the sole legal and beneficial owner of the respective assets over which it purports to grant Collateral.

(e) Shares. The constitutional documents of HK Loan Parties do not restrict or inhibit any transfer of the shares of any HK Loan Party on creation or enforcement of the HK Collateral Documents. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any HK Loan Party (including any option or right of pre-emption or conversion).

(f) Representations and Warranties. The representations and warranties contained in each HK Collateral Document are true and accurate in all material respects at the time they are expressed to be given in each case in accordance with the facts and circumstances then existing.

5. **AFFIRMATIVE COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Term Loan Commitments and payment in full of the Obligations:

5.1. **Financial Statements, Reports, Certificates**. Borrowers (a) will deliver to Agent each of the financial statements, reports, and other items set forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that no Subsidiary of a Loan Party will have a fiscal year different from that of Administrative Borrower, (c) agree to maintain books and records and a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP, (d) agree that they will maintain at a location in the United States that is subject to a collateral access agreement, true, correct and current copies of the financial data for the financial transactions of JAKKS Hong Kong, JAKKS Canada and each other Foreign Subsidiary in a manner consistent with past practice, and (e) agree that upon the reasonable request of Agent, shall cause copies of the books and records of JAKKS Hong Kong and JAKKS Canada that substantiate the transactions recorded in such general ledger to be located at a location in the United States that is subject to a collateral access agreement. Documents required to be delivered pursuant to Schedule 5.1 (to the extent any such documents are included in materials otherwise filed with the SEC) shall be deemed to have been delivered on the date on which such documents are posted on Administrative Borrower's behalf on the website of the SEC (including, for the avoidance of doubt, periodic financial statements filed on Form 10-K or Form 10-Q, as applicable).

5.2. **Reporting**. Borrowers (a) will deliver to Agent each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule. Borrowers and Agent hereby agree that the delivery of any reports set forth on Schedule 5.2 to this Agreement (to the extent deliverable) through the Agent's electronic platform or portal, subject to Agent's authentication process, by such other electronic method as may be approved by Agent from time to time in its sole discretion, shall in each case be deemed to satisfy the obligation of Borrowers to deliver such reports, with the same legal effect as if such reports had been manually executed by Borrowers and delivered to Agent.

5.3. **Existence**. Except as otherwise permitted under Section 6.3 or Section 6.4, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and preserve and maintain in full force and effect all rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4. **Maintenance of Properties and Material Contracts**. Each Loan Party will, and will cause each of its Subsidiaries to, (a) maintain in full force and effect and comply in all material respects with all Material Contracts and (b) maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, obsolescence and condemnation and Permitted Dispositions excepted, except, in each case, where the failure to so maintain and preserve assets could not reasonably be expected to result in a Material Adverse Effect.

5.5. **Taxes**. Each Loan Party will, and will cause each of its Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, other than Taxes not in excess of $100,000 outstanding at any time and other than to the extent that the validity of such Tax is the subject of a Permitted Protest.

5.6. **Insurance**.

(a) Each Loan Party will, and will cause each of its Subsidiaries to, at Borrowers' expense, maintain insurance with respect to each Loan Party's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located. All property insurance policies are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause. All certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable and additional insured endorsements in favor of Agent and shall provide for not less than thirty days prior written notice to Agent of the exercise of any right of cancellation. If any Loan Party or its Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(b) Borrowers shall give Agent prompt notice of any loss exceeding $100,000 covered by the casualty or business interruption insurance of any Loan Party or its Subsidiaries. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(c) If at any time the area in which any Real Property that is subject to a Mortgage is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are reasonably satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise reasonably satisfactory to Agent and all Lenders.

5.7. **Inspection**.

(a) Each Loan Party will, and will cause each of its Subsidiaries to, permit duly authorized representatives or agents of the Agent and each Lender to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided, that an authorized representative of a Borrower shall be allowed to be present) at such reasonable times and intervals as Agent or such Lender may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Borrowers and during regular business hours, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(b) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations at such reasonable times and intervals as Agent may designate with reasonable prior notice to Administrative Borrower, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(c) So long as no Event of Default shall have occurred and be continuing during a calendar year, Borrowers shall not be obligated to reimburse Agent for more than one field examination in such calendar year (increasing to two field examinations if an Increased Reporting Event has occurred during such calendar year) and one inventory appraisal in such calendar year (increasing to two inventory appraisals if an Increased Reporting Event has occurred during such calendar year).

5.8. **Compliance with Laws**. Each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Requirements of Law, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

5.9. **Environmental**. Each Loan Party will, and will cause each of its Subsidiaries to,

(a) Keep any property either owned or operated by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, except, in each case, as could not reasonably be expected to result in a Material Environmental Liability,

(b) Comply with Environmental Laws, except, in each case, as could not reasonably be expected to result in a Material Environmental Liability, and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or its Subsidiaries if such release could reasonably be expected to result in a Material Environmental Liability, and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within five Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Loan Party or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Loan Party or its Subsidiaries, in each case, if such Environmental Action could reasonably be expected to result in a Material Environmental Liability, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority if such violation, citation or administrative order could reasonably be expected to result in a Material Environmental Liability.

5.10. **Disclosure Updates**. Each Loan Party will, promptly and in no event later than five Business Days (or such longer period as Agent may agree in its sole discretion) after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report (other than forward-looking information, projections and other financial forecasts and budgets, information of a general economic nature, general information about Borrowers' industry, and information and reports provided by third party advisors) furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in any material respect in light of the circumstances in which made, in each case, after giving effect to all supplements and updates thereto subsequent to the date on which such information was furnished. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Formation of Subsidiaries; Additional Loan Parties**. If, at any time:

(a) any Loan Party forms or acquires any direct or indirect Subsidiary organized under the laws of the United States or Hong Kong (other than any Excluded Subsidiary);

(b) any (i) direct or indirect Subsidiary of any Loan Party organized under the laws of the United States or Hong Kong ceases to be an Excluded Subsidiary or (ii) Administrative Borrower determines that any of its Subsidiaries shall guarantee the Obligations;

(c) at the end of any fiscal quarter, the consolidated total assets or consolidated total revenues of the US Loan Parties and HK Loan Parties (on an aggregate basis) (determined on the basis of the four fiscal quarters then-ended) comprise less than 80% of the consolidated total assets or consolidated total revenues of the Administrative Borrower and each of its Subsidiaries (on an aggregate basis) for such period; or

(d) any direct or indirect Subsidiary of any Loan Party that, at such time, is not a Loan Party, guarantees or otherwise acts as surety for, or becomes an obligor in respect of, the ABL Obligations or any other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), or grants a Lien on any of its assets to secure the ABL Obligations or any other Indebtedness of a Loan Party or a Subsidiary of a Loan Party that is not permitted to be secured pursuant to Section 6.2, or otherwise provides any credit support or enhancement in respect of the ABL Obligations or any other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), then, within (x) in the case of clauses (a) and (b) of this Section 5.11, thirty (30) days of the formation, acquisition or designation, as applicable, of such Subsidiary (or such later date as may be permitted by Agent in its sole discretion), (y) in the case of clause (c) of this Section 5.11, thirty (30) days of the date the financial statements for the applicable fiscal quarter are required to be delivered hereunder (or such later date as may be permitted by Agent in its sole discretion), or (z) in the case of clause (d) of this Section 5.11, within one Business Day (or such later date as may be permitted by Agent in its sole discretion) of the date such Subsidiary guarantees the ABL Facility or such other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), the Loan Parties shall, in each case:

(A) (x) in the case of clauses (a), (b) and (d) above, designate such Subsidiary as a Loan Party and a Guarantor and (y) in the case of clause (c) above, designate as Loan Parties and Guarantors such additional Subsidiaries as would have been sufficient to achieve compliance with the 80% threshold set forth in clause (c) above had such Subsidiaries been Loan Parties and Guarantors throughout the relevant period(s), in each case, by delivering a notice of such designation to the Agent (each Subsidiary that is designated as a Loan Party and a Guarantor in accordance with the foregoing, an "Additional Obligor");

(B) cause each Additional Obligor to become a party to the Guaranty and Security Agreement and, subject to the limitations set forth herein and in the other Loan Documents, to execute and deliver such other guaranties, collateral and security agreements and such other documents and instruments (including (x) foreign law documentation reasonably requested by Agent with respect to any such Subsidiary that is a Foreign Subsidiary and (y) Mortgages with respect to any Real Property owned in fee of such new Subsidiary with a fair market value of greater than $500,000), as well as deliver appropriate financing statements (and with respect to all property subject to a Mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent to guarantee the Obligations and to create the Liens intended to be created under the Collateral Documents and perfect such Liens to the extent required by or in a manner consistent with the Loan Documents (including with the priority required by the Intercreditor Agreement); provided, that, with respect to each Subsidiary that is required to become an Additional Obligor pursuant to clause (d) above, such Subsidiary shall, in addition to the foregoing and subject to the Intercreditor Agreement (as applicable), take such additional actions and deliver such additional documents as shall be required by the Agent to ensure that the Secured Parties hereunder are treated as favorably as the secured parties or other beneficiaries under the ABL Facility or such other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), as applicable;

(C) provide to Agent a pledge agreement (or an addendum or joinder to the Guaranty and Security Agreement) and appropriate certificates and powers (to the extent the applicable Equity Interests are certificated), pledging all of the direct or beneficial ownership interest in each such Additional Obligor, in each case, in form and substance reasonably satisfactory to Agent (which pledge, if reasonably requested by Agent with respect to a Foreign Subsidiary, shall be governed by the laws of the jurisdiction of such Subsidiary); and

(D) provide to Agent all other documentation (including the Governing Documents of such Subsidiary and customary opinions of counsel (as applicable)) reasonably satisfactory to Agent, which, in its reasonable opinion, is customary and appropriate or reasonably necessary with respect to the execution and delivery of the applicable documentation referred to above or the performance of such Additional Obligor's obligations thereunder (including (x) policies of title insurance, flood certification documentation or other documentation with respect to all Real Property owned in fee and subject to a Mortgage and (y) all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations and requested by the Agent).

Notwithstanding anything in this Agreement to the contrary, (x) no actions will be required outside the United States in order to create or perfect any security interest in any asset located outside the United States (other than any such actions in (A) Hong Kong with respect to the JAKKS HK Loan Parties, and (B) any other jurisdiction with respect to a Non-US Loan Party, to the extent reasonably requested by the Agent, as applicable), except to the extent that such actions have been taken by or with respect to the applicable Additional Obligor in connection with the ABL Facility or such other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), as applicable, and (y) no non-U.S. law governed security or pledge agreements, foreign law governed mortgages or deeds or non-U.S. intellectual property filings or searches will be required (in each case, other than any such agreements governed under the laws of (A) Hong Kong, with respect to the JAKKS HK Loan Parties, and (B) any other jurisdiction, with respect to a Non-US Loan Party, to the extent reasonably requested by the Agent, as applicable), except to the extent that such agreements, mortgages, deeds, filings or searches, as applicable, have been provided by or with respect to the applicable Additional Obligor in connection with the ABL Facility or such other Indebtedness of a Loan Party or a Subsidiary of a Loan Party (other than Permitted Indebtedness), as applicable. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

5.12. **Further Assurances**. Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent and in accordance with the Guaranty and Security Agreement and subject to the limitations and qualifications set forth herein and therein, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens on substantially all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral pursuant to the Guaranty and Security Agreement), to create and perfect Liens in favor of Agent in any fee-owned Real Property acquired by any other Loan Party with a fair market value in excess of $500,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed 30 days following the request to do so, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral pursuant to the Guaranty and Security Agreement). Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, (x) Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise reasonably satisfactory to such Lender and (y) Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be reasonably satisfactory to Agent.

5.13. **Lender Meetings**. Borrowers will, within ninety (90) days after the close of each fiscal year of Administrative Borrower, at the request of Agent or of the Required Lenders and upon reasonable prior notice, hold a meeting (at a mutually agreeable location and time or, at the option of Agent, by conference call) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Loan Parties and their Subsidiaries and the projections presented for the current fiscal year of Administrative Borrower.

5.14. **Location of Inventory; Chief Executive Office**. Each Loan Party will, and will cause each of its Subsidiaries to, keep (a) their Inventory only at the locations identified on Schedule 4.26 to this Agreement (provided that Borrowers may amend Schedule 4.26 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten days (or such later date as the Agent may agree in its sole discretion) prior to the date on which such Inventory is moved to such new location and so long as such new location is within the continental United States), and (b) their respective chief executive offices only at the locations identified on Schedule 7 to the Guaranty and Security Agreement (unless Administrative Borrower has provided Agent with not less than ten days (or such later date as the Agent may agree in its sole discretion) prior written notice of any such change in chief executive office). Each Loan Party will, and will cause each of its Subsidiaries to, use their commercially reasonable efforts to obtain Collateral Access Agreements for each of the locations identified on Schedule 7 to the Guaranty and Security Agreement and Schedule 4.26 to this Agreement.

5.15. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16. **Conditions Subsequent**. Borrowers agree to take such actions, deliver such documents or other items, and satisfy or comply with such conditions or requirements (as applicable), as are set forth on Schedule 5.16 to this Agreement, in each case, on or before the date applicable thereto, (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

5.17. **Notices**. Administrative Borrower shall notify promptly (and in no event later than three (3) Business Days after a responsible officer of any Loan Party or any of its Subsidiaries becomes aware thereof (or such longer time period as the Agent may agree in its sole discretion)) Agent of the following:

(a) Default; Event of Default; Change of Control; Breach. The occurrence or existence of (i) any Default or Event of Default, or any event or circumstance that could reasonably be expected to become a Default or Event of Default hereunder or a "default" or "event of default" under the ABL Facility or any other Indebtedness with an aggregate principal amount outstanding in excess of $10,000,000, or (ii) any event or circumstance that permits, or could reasonably be expected to permit, any party to any Material Contract (other than any Loan Party or its Subsidiaries) to terminate or assign its rights thereunder;

(b) [Reserved].

(c) Proceeding. (i) Any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Loan Party or any Subsidiary and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in liabilities in excess of $500,000 and (ii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary (A) in which the amount of damages claimed is $500,000 or more, (B) in which injunctive or similar relief is sought and if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (C) in which the relief sought is an injunction or other stay of the performance of any Loan Document;

(d) Material Environmental Liabilities. Any event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in Material Environmental Liabilities;

(e) Liens. Any Loan Party shall have knowledge, or received notice, of any (i) ERISA Liens or (ii) any other Lien (other than a Permitted Lien) on any property of any Loan Party having a fair market value in excess of $100,000;

(f) Environmental. (i) The receipt by any Loan Party of any notice of violation of or potential liability or similar notice under Environmental Law, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or Liability under any Environmental Law which in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Material Environmental Liabilities, (iii) the receipt by any Loan Party of notification that any Property of any Loan Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv) any proposed acquisition or lease of Real Estate, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities;

(g) Material Adverse Effect. Subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement, any event, change, circumstance or occurrence (including any violation of or liability under ERISA or any other Requirement of Law and any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption) that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect;

(h) Financial Reporting Change. Any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary; and

(i) Tax. (i) The creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any income or franchise or other material Taxes with respect to any Loan Party and (ii) the creation of any Contractual Obligation of any Loan Party, or the receipt of any request directed to any Loan Party, to make any material adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise.

6. NEGATIVE COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Term Loan Commitments and the payment in full of the Obligations (excluding, in all cases, the JV Entities):

6.1. **Indebtedness**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2. **Liens**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3. **Restrictions on Fundamental Changes**. Each Loan Party will not, and will not permit any of its Subsidiaries to,

(a) enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for (i) any such transaction between Loan Parties; provided, that (x) a Borrower must be the surviving entity of any such merger or consolidation to which it is a party and (y) a US Loan Party must be the surviving entity of a merger or consolidation to which it is a party with a non-US Loan Party, (ii) any such transaction between a Loan Party and a Subsidiary of such Loan Party that is not a Loan Party so long as such Loan Party is the surviving entity of any such merger or consolidation, and (iv) any such transaction between Subsidiaries of any Loan Party that are not Loan Parties,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Loan Party with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than any Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party (and if the dissolving entity is a US Loan Party, only to another US Loan Party that is not liquidating or dissolving), or (iii) the liquidation or dissolution of a Subsidiary of any Loan Party that is not a Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Loan Party or a Subsidiary of a Loan Party that is not liquidating or dissolving; provided that with respect to any such Subsidiary the Equity Interests of which (or any portion thereof) are subject to a Lien in favor of Agent, the assets of such Subsidiary are transferred to another Subsidiary the Equity Interests of which (or not less than a corresponding portion thereof) are subject to a Lien in favor of Agent, or

(c) suspend or cease operating a substantial portion of its or their business, except (i) as permitted pursuant to clauses (a) or (b) above, (ii) in connection with a transaction permitted under Section 6.4 or (iii) solely with respect to any Subsidiary of a Borrower that is not a Loan Party, if such suspension or cessation of business could not reasonably be expected to be materially adverse to the Agent or any Lender.

6.4. **Disposal of Assets**. Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9, each Loan Party will not, and will not permit any of its Subsidiaries to, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of its or their assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division", and including the issuance or sale of Equity Interests by any Loan Party or any of their Subsidiaries).

6.5. **Nature of Business**. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any material change in the nature of its or their business as conducted on the Closing Date or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent any Loan Party and its Subsidiaries from engaging in any business that is reasonably related, incidental or ancillary to its or their business.

6.6. **Amendments to Governing Documents**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, amend, modify, or change any of the terms or provisions of the Governing Documents of any Loan Party if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders (it being understood that any amendment, modification or other change to the Governing Documents of any Loan Party that is necessary to affect any transaction permitted by Section 6.3 or Section 6.9 shall be deemed to be not materially adverse to Agent or any of the Lenders).

6.7. **Restricted Payments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any Restricted Payment; provided, that so long as it is permitted by law,

(a) JAKKS may (i) satisfy its obligations under the 2020 Convertible Notes in accordance with the terms thereof, (ii) solely to the extent required by the 2023 Oasis Convertible Notes (as in effect on the Closing Date), make payments to the holders of such 2023 Oasis Convertible Notes required upon conversion thereof, (iii) repurchase or redeem the Series A Preferred Stock upon the occurrence of a "Liquidity Event" with respect to such Series A Preferred Stock, (iv) declare and pay dividends with respect to the Series A Preferred Stock in accordance with the terms thereof, and (v) make payments on the ABL Facility as required or permitted by the terms thereof,

(b) JAKKS may declare and pay dividends with respect to its Qualified Equity Interests payable solely in additional units or shares of its Equity Interests (other than Disqualified Equity Interests),

(c) a Loan Party or a Subsidiary of a Loan Party may make Restricted Payments to a US Loan Party,

(d) (i) any Non-US Loan Party and any Foreign Subsidiary may make Restricted Payments to a Loan Party and (ii) any Subsidiary of a Loan Party that is not a Loan Party may make Restricted Payments to any Loan Party or any other Subsidiary of a Loan Party,

(e) JAKKS may redeem Equity Interests owned by employees for the express purpose of permitting such employees to satisfy their respective income tax obligations that result directly from the vesting of restricted Equity Interest grants owned by such employees, in an aggregate amount not to exceed $1,000,000 in any Fiscal Year,

(f) cash payments in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof, any exercise of warrants or options, any conversion of the Convertible Notes or any Permitted Investment in an aggregate amount not to exceed $1,000,000 in any Fiscal Year.

(g) any Restricted Payment by a Subsidiary of JAKKS to JAKKS or another Subsidiary of JAKKS, including any Loan Party, in each case, ratably according to their respective holdings of the type of Equity Interests in respect of which such Restricted Payment is being made (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary of JAKKS, to JAKKS and any other Subsidiary of JAKKS and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of such Equity Interests); and

(h) (i) to the extent constituting Restricted Payments, transactions permitted by Section 6.9 and (ii) any Loan Party or any Subsidiary thereof may make Restricted Payments directly to any Loan Party or any Subsidiary thereof to permit any payment in respect of a transaction permitted by Section 6.9.

6.8. **Fiscal Periods; Accounting Methods; Names and Jurisdictions**. Each Loan Party will not, and will not permit any of its Subsidiaries to, (a) modify or change its fiscal year-end from December 31 of each year, or its method for determining fiscal quarters of any Loan Party or of any consolidated Subsidiaries, or (b) modify or change its method of accounting, accounting treatment or reporting practices (other than as may be required to conform to GAAP) or as permitted pursuant to Section 1.2 hereof.

6.9. **Investments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10. **Transactions with Affiliates**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring or advisory fees) between such Loan Party or its Subsidiaries, on the one hand, and any Affiliate of such Loan Party or its Subsidiaries, on the other hand, so long as such transactions are no less favorable, taken as a whole, to such Loan Party or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) any indemnity provided for the benefit of directors (or comparable managers) of a Loan Party or one of its Subsidiaries so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(c) the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party or one of its Subsidiaries in the ordinary course of business and consistent with industry practice so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(d) (i) transactions solely among the Loan Parties and (ii) transactions solely among Subsidiaries of Loan Parties that are not Loan Parties,

(e) transactions permitted by Section 6.3, Section 6.7, or Section 6.9,

(f) all such transactions existing as of the Closing Date and described on Schedule 6.10,

(g) [reserved],

(h) agreements for the non-exclusive licensing of intellectual property, or distribution of products, in each case, among the Loan Parties and their Subsidiaries for the purpose of the counterparty thereof operating its business, and agreements for the assignment of intellectual property from any Loan Party or any of its Subsidiaries to any Loan Party, and

(i) transactions with any Person that constitutes an Affiliate solely as a result of the Recapitalization Transactions and in connection with any matter contemplated by the Recapitalization Transaction Agreement or by the Series A Preferred Stock issued to such person in connection therewith.

6.11. **Use of Proceeds**. Each Loan Party will not, and will not permit any of its Subsidiaries to, use the proceeds of any Term Loan made hereunder for any purpose other than (a) on the Closing Date, to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the Recapitalization Transactions, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Term Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Term Loan will be used, directly or indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Term Loan will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.12. **Inventory with Bailees**. Each Borrower will not, and will not permit any of its Subsidiaries to, store its Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.26 (as such Schedule may be amended in accordance with Section 5.14).

6.13. **Amendments to Subordinated Indebtedness**. Each Borrower will not, and will not permit any of its Subsidiaries to, change or amend the terms of any:

(a) any Subordinated Indebtedness Document (except to the extent permitted by the applicable Subordination Agreement), or

(b) any other Subordinated Indebtedness not subject to a Subordination Agreement, to the extent such change or amendment is adverse to the Lenders; provided that the following changes or amendments shall be deemed to be adverse to the Lenders: (i) changes and amendments resulting in the interest rate applicable to the Subordinated Indebtedness being increased by more than 3% higher than the rate prior to such change or amendment, (ii) changes and amendments triggering cash interest to be payable instead of interest payable-in-kind (to the extent such Subordinated Indebtedness Documents previously required interest to be paid in kind), (iii) changes and amendments providing for payment of any make-whole, premium or additional fees on the Subordinated Indebtedness (other than any required consent fees not exceeding 1% of the aggregate outstanding principal amount of such Subordinated Indebtedness), (iv) changes and amendments (x) causing any principal of such Subordinated Indebtedness to be paid prior to maturity date of the Subordinated Indebtedness, (y) accelerating the maturity date of such Subordinated Indebtedness or (z) bringing forward any other applicable scheduled payment date, (v) amendments resulting in the covenants (including financial covenants), reporting requirements and/or events of default applicable to such Subordinated Indebtedness becoming more restrictive on the Loan Parties than those in the Loan Documents, or changes or amendments resulting in the holders of such Subordinated Indebtedness having rights that are, taken as a whole, materially more favorable to such holders than the rights of the Lenders under the Loan Documents (it being understood that if any such financial covenant, reporting requirement or event of default is (x) only applicable after the Maturity Date or (y) also added to the Loan Documents for the benefit of the Lenders, such change or amendment shall no longer be deemed to be adverse to the Lenders), (vi) changes or amendments to the payment subordination provisions that are adverse to the Lenders, (vii) changes or amendments causing the Subordinated Indebtedness to become secured or guaranteed by any entity that is not a Guarantor hereunder and (viii) changes or amendments impacting the Loan Parties' ability to service the Obligations.

6.14. **Sale-Leasebacks**. Each Borrower will not, and will not permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

6.15. **Hazardous Materials**. Each Borrower will not, and will not permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any Real Estate (whether or not owned by any Loan Party or any Subsidiary), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16. **No Burdensome Agreements**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction (a) on its ability or the ability of any such Subsidiary to pay dividends or make any other distribution on any of such Loan Party's or Subsidiary's Equity Interests or to pay fees, including management fees, or make other payments and distributions to a Borrower or any other Loan Party, or to pay any interest, principal or other payments with respect to the Obligations; or (b) prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, except, in each case, (i) under the Loan Documents, (ii) under the ABL Facility, (iii) in connection with any document or instrument governing any other Permitted Liens; provided, that any such restriction contained therein relates only to the asset or assets subject to such Permitted Liens; provided, further, that any such restriction is (x) not materially more restrictive, taken as a whole, as determined in good faith by Administrative Borrower, on the Loan Parties and their Subsidiaries than the Loan Documents or (y) will not, in the good faith judgment of Administrative Borrower, affect the ability of Borrowers to make any payments required hereunder in respect of the Obligations, (iv) under the Convertible Notes, (v) under the Series A Preferred Stock, (vi) any prohibition or limitation that (a) exists pursuant to applicable Requirements of Law, (b) consists of customary restrictions and conditions contained in any agreement relating to any Permitted Disposition pending the consummation of such sale, (c) restricts subletting or assignment of leasehold interests contained in any lease governing a leasehold interest of any Loan Party or any Subsidiary thereof, (d) exists in any agreement in effect at the time such Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary or (e) affects an asset that is acquired after the Closing Date that is in existence at the time of acquisition of such asset (but not created in contemplation thereof), which encumbrance or restriction is not applicable to other assets of the Loan Parties or their Subsidiaries and (viii) any customary provisions in joint venture agreements, partnership agreements, limited liability company agreements and other similar agreements entered into in the ordinary course of business and not otherwise prohibited hereunder.

6.17. **ERISA**. No Loan Party will adopt, sponsor, contribute to, maintain, or suffer to exist any liabilities, contingent or otherwise (including, without limitation, as an ERISA Affiliate), or permit, cause or suffer to exist any Subsidiary thereof to adopt, sponsor, contribute to, maintain or suffer to exist any liabilities in respect of, any (A) Title IV Plan, (B) Multiemployer Plan, (C) any OPEB Plan, or (D) any arrangement similar to (A), (B) or (C) that is subject to Requirements of Law outside of the United States that are not required by such law, which results or could reasonably be expected to result, individually or in the aggregate, liabilities in excess of $1,000,000.

6.18. **Limitations on Certain Loan Parties.** Each of Maui, Inc., an Ohio corporation and Kids Only, Inc., a Massachusetts corporation, shall not own or acquire any material assets or engage itself in any material business operations, except in connection with its obligations under the Loan Documents and the ABL Loan Documents and except in connection with a transaction permitted under Section 6.3. Moose Mountain Marketing, Inc., a New Jersey corporation, shall not own or acquire any material assets or engage itself in any material business operations, except in connection with (a) its obligations under the Loan Documents and the ABL Loan Documents, (b) its current business which is to act as a licensee of licensed properties for use with products marketing by the Seasonal Division, which principally include ball pits, activity tables and ride-on toys, or (c) a transaction permitted under Section 6.3.

Notwithstanding anything else herein or in any other Loan Document to the contrary, the Loan Parties and their Subsidiaries may enter into transactions with any Affiliate of a Borrower or any Subsidiary constituting transactions, payments, outstanding intercompany balances, Property transfers and other activities constituting the transfer pricing system of the Loan Parties and their Subsidiaries consistent with past practice and in the ordinary course of business of the Loan Parties and their Subsidiaries.

7. **FINANCIAL COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Term Loan Commitments and the payment in full of the Obligations, Borrowers will:

(a) **Minimum EBITDA**. Not permit the EBITDA of the Loan Parties and their Subsidiaries on a consolidated basis for the trailing twelve (12) month period ending on the last day of each fiscal quarter of the Borrowers for which financial statements are required to be delivered to the Agent in accordance with this Agreement (commencing with the fiscal quarter ending September 30, 2020) to be less than $34,000,000.

(b) **Minimum Liquidity**. At all times after September 30, 2020, maintain Liquidity of at least $10,000,000.

8. **EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1. **Payments**. If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three Business Days or (b) all or any portion of the principal of the Term Loans;

8.2. **Covenants**. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 5.1, 5.2, 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers' affairs, finances, and accounts with officers and employees of any Borrower in each case in accordance with the terms thereof), 5.10, 5.11, 5.13 or 5.16 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of ten days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent;

8.3. **Judgments**. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of $500,000 or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of thirty consecutive days at any time after the entry of any such judgment, order, or award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. **Voluntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5. **Involuntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6. **Default Under Other Agreements**. If (a) any Loan Party defaults in the performance of its obligations under any agreement governing Indebtedness in an outstanding principal amount of $10,000,000 or more and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, (b) a default under, or an involuntary early termination of, one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party, or (c) a Loan Party or any Subsidiary fails to make any payment when due or any other event of default shall occur under any agreement or instrument relating to the Convertible Notes or the ABL Facility;

8.7. **Representations, etc**. If any warranty, representation, certificate, statement, or Record made by any Loan Party herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8. **Guaranty**. If the obligation of any Guarantor under the guaranty contained in the Guaranty and Security Agreement or any Foreign Collateral Document, as applicable, is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement (including, for the avoidance of doubt, by virtue of the merger of a Loan Party into another Loan Party, to the extent expressly permitted hereunder) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

8.9. **Collateral Documents**. If the Guaranty and Security Agreement or any other Collateral Document shall, for any reason, fail or cease to create a valid and perfected first priority (subject to (x) the lien priorities set forth in the Intercreditor Agreement and (y) Permitted liens which are not required under the terms of the Loan Documents to be subordinated to Agent's Liens), except (a) in connection with any transaction permitted under this Agreement (including any release of any Lien on any Collateral in connection therewith) or (b) as a result of an action or failure to act on the part of Agent or any Lender;

8.10. **Loan Documents**. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document; or

8.11. **Change of Control**. A Change of Control shall occur.

8.12. **Invalidity of Intercreditor Agreement**. The Intercreditor Agreement shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect (other than in accordance with its terms), any Loan Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, the Obligations, for any reason, shall not have the priority contemplated by the Intercreditor Agreement.

8.13. **HK Loan Parties; Non-US Loan Parties**. It is or becomes unlawful for a HK Loan Party or any other Non-US Loan Party to perform any of its obligations under the Loan Documents, or any HK Loan Party or any other Non-US Loan Party repudiates or rescinds a Loan Document or evidences an intention to repudiate/rescind a Loan Document.

8.14. **ERISA**. (a) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, would reasonably be expected to result in liability of any Loan Party (including without limitation any liability arising indirectly from its ERISA Affiliates) in an aggregate amount exceeding $1,000,000, or (ii) an ERISA Lien is imposed on any Loan Party or any Subsidiary thereof.

8.15. **Series A Preferred Stock**. The Administrative Borrower fails to comply with the Scheduled Provisions, and such failure continues for a period of ten days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent.

9. **RIGHTS AND REMEDIES.**

9.1. **Rights and Remedies**. Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Borrowers, declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Term Loans and all other Obligations, whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower; and

(b) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Obligations, inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Term Loans and all other Obligations, whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full, without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrowers.

9.2. **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. **WAIVERS; INDEMNIFICATION.**

10.1. **Demand; Protest; etc**. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2. **The Lender Group's Liability for Collateral**. Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the UCC, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

10.3. **Indemnification**. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Loan Parties' and their Subsidiaries' compliance with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Indemnified Persons that do not involve any acts or omissions of any Loan Party (other than any disputes against any Indemnified Person in its capacity or fulfilling the role as Agent) or (ii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Term Loans hereunder, or the use of the proceeds of the Term Loans provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents; provided, that notwithstanding the foregoing, in no event shall Borrower's indemnification obligations under this Section 10.3 include any Indemnified Liabilities in respect of legal fees, disbursements and expenses in excess of the reasonable and documented out-of-pocket fees of one firm of counsel to the Agent-Related Persons, taken as a whole, and, to the extent necessary, one local counsel in each relevant jurisdiction and one specialist counsel (including insolvency and regulatory counsel, as applicable) to the Agent-Related Persons, taken as a whole, and one firm of counsel to the Lender-Related Persons, take as a whole, and to the extent necessary, one local counsel in each relevant jurisdiction and one specialist counsel (including insolvency and regulatory counsel, as applicable) to the Lender-Related Persons; provided however, that solely in the case of an actual or perceived conflict of interest, where the Indemnified Person affected by such conflict informs the Borrowers of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Indemnified Persons (but excluding, in all cases, the allocated costs of in-house or internal counsel to any Indemnified Person. This Section 10.3 and the Loan Parties' obligations hereunder shall survive the resignation of the Agent, the replacement of any Lender, the termination or discharge of this Agreement and the other Loan Documents, and the repayment, satisfaction or discharge in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party:	c/o Administrative Borrower 2951 28th Street Santa Monica, California 90405 Attn: Brent Novak Fax No.: (424) 268-9655
with a copy to:	Feder Kaszovitz LLP 845 Third Avenue New York, New York 10022 Attention: Geoffrey A. Bass, Esq. Fax No.: (212) 888-7776
If to Agent:	**Cortland Capital Market Services LLC** 225 W. Washington Street, 9th Floor Chicago, IL 60606 Attn: Kaleigh Rowe and Legal Department Fax No.: 312-376-0751
with a copy to:	Stroock & Stroock & Lavan LLP 180 Maiden Lane New York. NY 10038 Attn: Frank Merola, Esq. Fax No.: (212) 806-6006 Email: fmerola@stroock.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(d) **EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(e) **NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH PARTY HERETO HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

(f) **IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:**

(i) **WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.**

(ii) **THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.**

(iii) **UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.**

(iv) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.**

(v) **THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.**

(vi) **THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.**

(vii) **THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.**

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.**

13.1. **Assignments and Participations**.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Administrative Borrower; provided, that no consent of Administrative Borrower shall be required (1) if an Event of Default has occurred and is continuing or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(B) Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural person or a Competitor,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party (except to any Affiliate who was a Lender on the Closing Date, or who is an Affiliate of any such Lender),

(C) the amount of the Term Loan Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000),

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(E) the parties to each assignment shall execute and deliver to Administrative Borrower and Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of $3,500, and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire") and all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and requested by Agent.

(b) From and after the date that Agent records the executed Assignment and Acceptance in the Register and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Term Loan Commitments arising therefrom. The Term Loan Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Term Loan Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decrease the amount or postpone the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person or a Competitor, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; provided that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of a Term Loan Commitment (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Term Loan Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form for the purposes of the Code, including under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2. **Successors**. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS.**

14.1. **Amendments and Waivers**.

(a) Except as provided in Section 2.12 with respect to any Incremental Facility Amendment or as otherwise provided in Section 14.1(b), no amendment, waiver or other modification of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the direction of the Required Lenders) and the Loan Parties that are party thereto, and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, modification or consent shall, unless in writing and signed by each Lender directly affected thereby (or by Agent at the direction and with the consent of such Lender) and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of, or extend the expiration date of any Term Loan Commitment of any such Lender,

(ii) (x) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document (provided that any postponement or delay of any mandatory prepayments shall only require the consent of Required Lenders) or (y) cause any payment subordination to apply to the Obligations,

(iii) reduce the principal of, or the rate of interest on, such Lenders' Term Loans or other extension of credit or Obligation hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of interest payable in cash or change the manner, form or currency of any payment of any principal, interest, fee or other amount hereunder (except that (x) a waiver of the imposition of interest at the Default Rate shall only require the consent of Required Lenders, (y) any reduction, waiver or other modification of or with respect to any mandatory prepayments shall only require the consent of the Required Lenders and (z) any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) amend, modify, or eliminate Section 3.1 or 3.2,

(vi) amend, modify, or eliminate Section 15.11, or any other provision that has the direct or indirect effect of any such modification or amendment,

(vii) other than as permitted by Section 15.11, release or subordinate Agent's Lien in and to any of the Collateral, or release all or substantially all of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", or "Pro Rata Share", or otherwise change the percentage of the Term Loans or Lenders or of the aggregate unpaid principal amount of the Term Loans which shall be required for Lenders or any of them to take any action hereunder,

(ix) other than in connection with a transaction expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents, or

(x) amend, modify, or eliminate any pro rata sharing provision or any other provision that requires that Lenders be treated ratably or otherwise in accordance with their Pro Rata Shares, including with respect to application of payments.

(b) Notwithstanding anything to the contrary herein, no amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate:

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the consent of any of the Lenders), or

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders.

(c) [Reserved];

(d) [Reserved]; and

(e) Anything in this Section 14.1 to the contrary notwithstanding, any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party.

14.2. **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more substitute Lenders or prospective Lenders reasonably acceptable to Agent ("Replacement Lenders") and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including all interest, fees and other amounts that may be due in payable in respect thereof). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1.

14.3. **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. **AGENT; THE LENDER GROUP.**

15.1. **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints Cortland as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Term Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

With respect to any term or provision of this Agreement or any other Loan Document that requires the approval, satisfaction, discretion, determination, decision, action or inaction or any similar concept of or by the Agent, or that allows, permits, requires, empowers or otherwise provides that any matter, action, decision or similar may be taken, made or determined by the Agent without expressly referring to the requirement to obtain consent or input from any Lenders, or to otherwise notify any Lender, such term or provision shall be interpreted to refer to the Agent exercising its Permitted Discretion.

15.2. **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Loan Party, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any incurrence of a Term Loan or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

Notwithstanding anything to the contrary contained in this Agreement, (a) the Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Competitors and (b) the Borrowers (on behalf of themselves and the other Loan Parties) and the Lenders acknowledge and agree that the Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is an Competitor and that the Agent shall have no liability with respect to any assignment or participation made to an Competitor.

15.4. **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

15.5. **Notice of Default or Event of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision**. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

15.7. **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis (or, if indemnification is sought after the date upon which the Loans shall have been paid in full, ratably in accordance with such position held immediately prior to such date), shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity**. Cortland and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Cortland were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, Cortland or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Cortland in its individual capacity.

15.9. **Successor Agent**. Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or an Event of Default has occurred and is continuing). If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity**. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize Agent to release any Lien on any Collateral (i) upon the termination of the Term Loan Commitments and payment and satisfaction in full by the Loan Parties of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Agent or Borrowers at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's reasonable opinion, could reasonably be expected to expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property. Notwithstanding the provisions of this Section 15.11, the Agent shall be authorized, without the consent of any Lender and without the requirement that an asset sale consisting of the sale, transfer or other disposition having occurred, to release any security interest in any building, structure or improvement located in an area determined by the Federal Emergency Management Agency to have special flood hazards.

(b) Agent shall have no obligation whatsoever to any of the Lenders (i) to verify or assure that the Collateral exists or is owned by a Loan Party or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise expressly provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection**. Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the UCC can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

15.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party to Agent that has not been contemporaneously provided by such Loan Party to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for such Lender or on its behalf, nor to take any other action on behalf of such Lender hereunder or in connection with the financing contemplated herein.

15.18. **Certain ERISA Matters**.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans or the Term Loan Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Loan Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loans, the Term Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Term Loan Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Loan Commitments and this Agreement, or (iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that neither the Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Loan Commitments and this Agreement.

16. **WITHHOLDING TAXES.**

16.1. **Payments**. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party shall make the requisite withholding, pay over to the applicable Governmental Authority the withheld tax in accordance with applicable law, and furnish to Agent within 30 days after the date the payment of any such Tax, certified copies of tax receipts evidencing such payment by the Loan Parties or other evidence of such payment reasonably satisfactory to Agent. Furthermore, if any such Tax is an Indemnified Taxes, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that after such withholding or deduction has been made for or on account of any Indemnified Taxes (including such withholdings and deductions applicable additional sums payable under this Section 16.1), the applicable recipient receives an amount equal to the sum it would have received if no such withholding or deduction of Indemnified Taxes had been made. The Loan Parties will timely pay any Other Taxes or, at the request of Agent, timely reimburse Agent for such Other Taxes. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate of a Tax Indemnitee (or of Agent on behalf of such Tax Indemnitee) claiming any compensation under this Section 16.1, setting forth the amounts to be paid thereunder and delivered to the Administrative Borrower with a copy to Agent, shall be conclusive, binding and final for all purposes, absent manifest error. The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

16.2. **Exemptions**.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement (provided, that notwithstanding anything to the contrary in the preceding, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (i), (ii) and (iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender):

(i) any Lender that is a U.S. Person shall deliver to the Administrative Borrower and the Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Administrative Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Agent), whichever of the following is applicable:

(A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) executed copies of IRS Form W-8ECI;

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a U.S. Tax Compliance Certificate substantially in the form of Exhibit T-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of such Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to such Borrower as described in Section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-8BEN or IRS Form W 8BEN-E; or

(D) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit T-2 or Exhibit T-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit T-4 on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Agent), executed copies of any other form prescribed by any applicable Requirement of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by any Requirement of Law to permit the Administrative Borrower or the Agent to determine the withholding or deduction required to be made; and (iv) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Administrative Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Borrower or the Agent such documentation prescribed by any applicable Requirement of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Administrative Borrower or the Agent as may be necessary for the Administrative Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant is entitled to claim an exemption from or reduction of withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Term Loan Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent or Administrative Borrower (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent or Administrative Borrower (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

16.3. **Reductions**.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4. **Refunds**. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, it shall, subject to Section 9, pay over such refund to the Administrative Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16.4 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1. **Effectiveness**. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2. **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3. **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. **[Reserved]**.

17.6. **Debtor-Creditor Relationship**. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

17.8. **Revival and Reinstatement of Obligations; Certain Waivers**. If any member of the Lender Group repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9. **Confidentiality**.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group; provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Term Loan Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid

17.11. **Patriot Act; Due Diligence**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12. **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

17.13. **JAKKS as Agent for Borrowers**. Each Borrower hereby irrevocably appoints JAKKS as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Term Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), and (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Term Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to (i) disputes solely between or among Agent-Related Persons and/or Lender-Related Persons (other than Agent in its capacity as Agent) that do not involve any violation of the Loan Documents by a Loan Party, (ii) any claims primarily related to Taxes or any costs attributable to Taxes which shall be governed by Section 16 or (iii) any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be; provided that, notwithstanding the foregoing, in no event shall Borrowers' indemnification obligations under this Section 17.13 include any liability, expense, loss or claim of damage or injury in respect of legal fees, disbursements and expenses in excess of the reasonable and documented out-of-pocket fees of one firm of counsel to all Agent-Related Persons and Lender-Related Persons, taken as a whole, and, to the extent necessary, one local counsel in each relevant jurisdiction to all Agent-Related Persons and Lender-Related Persons, taken as a whole, and solely in the case of an actual or perceived conflict of interest, where the Agent-Related Person or Lender-Related Persons affected by such conflict informs the Borrowers of such conflict and thereafter retains its own counsel, one additional firm of counsel in each relevant jurisdiction to each group of similarly situated affected Agent-Related Persons or Lender-Related Persons (but excluding, in all cases, the allocated costs of in-house or internal counsel to any Agent-Related Person or Lender-Related Person).

17.14. **Acknowledgement and Consent to Bail-In of EEA Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

17.15. **Intercreditor Agreement**. Each Lender hereby (a) agrees that this Agreement and the other Loan Documents, and the rights and remedies of the Agent and the Lenders hereunder and thereunder, are subject to the terms of the Intercreditor Agreement (and to the extent any term of this Agreement or any other Loan Document conflicts or is inconsistent with the terms thereof, the terms of the Intercreditor Agreement shall control), (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement, and (c) hereby authorizes and instructs the Agent to enter into the Intercreditor Agreement

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWERS:

JAKKS PACIFIC, INC.,
a Delaware corporation

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

DISGUISE, INC.,
a Delaware corporation

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

JAKKS SALES LLC,
a Delaware limited liability company

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MAUI, INC.,
an Ohio corporation

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

MOOSE MOUNTAIN MARKETING, INC.,
a New Jersey corporation

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

KIDS ONLY, INC.,
a Massachusetts corporation

By: /s/ *Stephen G. Berman*
Name: Stephen G. Berman
Title: President and Chief Executive Officer

AGENT:

CORTLAND CAPITAL MARKET SERVICES LLC, as Agent

By: /s/ *Emily Ergang Pappas*
Name: Emily Ergnag Pappas
Associate Counsel

AXAR MASTER FUND, LTD., as a Lender
By: Axar Capital Management LP,
its investment manager

By: /s/ *Andrew Axelrod*
Name: Andrew Axelrod
Its Authorized Signatory

STAR V PARTNERS L.L.C., as a Lender
By: Axar Capital Management LP,
its investment manager

By: /s/ *Andrew Axelrod*
Name: Andrew Axelrod
Its Authorized Signatory

BLACKWELL PARTNERS LLC – SERIES E., as a Lender
solely with respect to the assets for which Axar Capital Management LP
acts as its investment manager

By: Axar Capital Management LP,
its investment manager

By: /s/ *Andrew Axelrod*
Name: Andrew Axelrod
Its Authorized Signatory

BSP SPECIAL SITUATIONS MASTER A L.P., as a Lender

By: /s/ *Bryan Martoken*
Name: Bryan Martoken
Title: Chief Financial Officer

CONCISE SHORT TERM HIGH YIELD MASTER FUND, SPC,
as a Lender

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Principal

MERCER QIF FUND PLC – MERCER INVESTMENT FUND I,
as a Lender

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Principal

THE SARATOGA ADVANTAGE TRUST – JAMES ALPHA HEDGED HIGH INCOME PORTFOLIO,
as a Lender

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Principal

CONCISE SHORT TERM HIGH YIELD FUND,
as a Lender

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Principal

THE BEEBEE FOUNDATION,
as a Lender

By: /s/ *Thomas Krasner*
Name: Thomas Krasner
Principal

CITADEL EQUITY FUND LTD.,
as a Lender
BY: CITADEL ADVISORS LLC, ITS
PORTFOLIO MANAGER

By: /s/ *Christopher Ramsay*
Name: Christopher Ramsay
Authorized Signatory

MOAB PARTNERS, L.P., as a Lender
By: Moab Capital Partners, LLC, its investment adviser

By: /s/ *Chad Goldstein*
Name: Chad Goldstein
Chief Financial Officer

UBS O'CONNOR, LLC on behalf of:
NINETEEN77 GLOBAL MULTI-STRATEGY
ALPHA MASTER LIMITED, as a Lender

By: /s/ *Jeff Richmond*
Name: Jeff Richmond
Executive Director

By: /s/ *James DelMedico*
Name: James DelMedico
Executive Director

Exhibit 10.4

ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 5(c)(iv) AND 12(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iv) OF THIS NOTE.

JAKKS PACIFIC, INC.
AMENDED AND RESTATED CONVERTIBLE SENIOR NOTE

Issuance Date: November 7, 2017
Amendment and Restatement Date: August 9, 2019

Original Principal Amount:
U.S. $21,550,000

Certificate No.: 1

FOR VALUE RECEIVED, JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to OASIS INVESTMENTS II MASTER FUND LTD. or registered assigns (the "**Holder**") in cash and/or in shares of Common Stock (as defined below) the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise and as it may be increased by PIK Interest (as defined below) pursuant to Section 2(a)(ii), the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon an Interest Date (as defined below), the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Amended and Restated Convertible Senior Note, including any Amended and Restated Convertible Senior Note issued in exchange, transfer or replacement hereof, is referred to as this "**Note**" and was originally issued pursuant to the Exchange Agreement on the Issuance Date and is being amended and restated on the Amendment and Restatement Date pursuant to the Transaction Agreement. The Other Oasis Notes, and any notes issued in exchange, transfer or replacement thereof, are collectively referred to herein as the "**Other Notes**" and, together with this Note, the "**Notes**." Certain capitalized terms used herein are defined in Section 25.

This Note amends and restates and replaces in its entirety that certain Convertible Senior Note dated as of November 7, 2017 issued by the Company to the Holder in the original principal amount of Twenty-One Million Five Hundred Fifty Thousand Dollars ($21,550,000) (the "**Original Note**"). The indebtedness evidenced by the Original Note which remains unpaid and outstanding as of the Amendment and Restatement Date shall be and remain (without duplication) outstanding and payable as an obligation under this Note, and nothing contained in this Note is intended to be, nor shall it be deemed to be, an extinguishment, settlement or novation of such indebtedness.

(1) PAYMENTS OF PRINCIPAL; PREPAYMENT.

(a) On the Maturity Date, the Company shall pay to the Holder an amount representing all outstanding Principal, accrued and unpaid Interest on such Principal and Interest (the "**Maturity Amount**"). The "**Maturity Date**" shall be 91 days after the repayment in full of the First Lien Loan; provided, however, that in no event shall the Maturity Date be later than July 3, 2023. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, if any. The Maturity Amount shall be payable to the record holder of this Note on the Maturity Date in cash; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay the Maturity Amount in shares of Common Stock ("**Maturity Shares**") so long as there has been no Equity Conditions Failure during the period from the Maturity Notice Date (as defined below) preceding the Maturity Date through the Maturity Date or in a combination of cash and Maturity Shares. The Company shall deliver a written notice (the "**Maturity Notice**") to the Holder and each holder of Other Notes on or prior to the Maturity Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Maturity Notice Date**") which notice (i) either (a) confirms that the Maturity Amount shall be paid entirely in cash, or (b) elects to pay the Maturity Amount as Maturity Shares or a combination of cash and Maturity Shares and specifies the portion of the Maturity Amount, if any, that shall be paid in cash and the portion, if any, that shall be paid in Maturity Shares which amounts, when added together, must equal the Maturity Amount due on the Maturity Date, and (ii) if the Maturity Amount is to be paid, in whole or in part, in Maturity Shares, certifies that there has been no Equity Conditions Failure as of the Maturity Notice Date. If there is an Equity Conditions Failure as of the Maturity Notice Date, then unless the Company has elected to pay the Maturity Amount in cash, the Maturity Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If the Company confirmed (or is deemed to have confirmed by operation of this Section 1) the payment of the Maturity Amount in Maturity Shares, in whole or in part, and if there was no Equity Conditions Failure as of the Maturity Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure in connection with the Maturity Amount payment in Maturity Shares by operation of this Section 1) but an Equity Conditions Failure occurred between the Maturity Notice Date and any time prior to the Maturity Date (the "**Maturity Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during the Maturity Interim Period, then at the option of the Holder, the Holder may require the Company to pay the Maturity Amount in cash. If any portion of Maturity Amount shall be paid in Maturity Shares, then on the Maturity Date, the Company shall issue to the Holder, in accordance with Section 1(b), such number of shares of Common Stock equal to (a) the Maturity Amount payable in Maturity Shares divided by (b) the Maturity Share Price with any fractional share amounts rounded up to the nearest whole number of shares. All Maturity Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver a Maturity Election Notice in accordance with this Section 1(a), then the Company shall be deemed to have delivered an irrevocable Maturity Election Notice confirming the payment of cash. Except as expressly provided in this Section 1, the Company shall pay the Maturity Amount in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 1 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Maturity Shares and/or cash hereunder.

(b) When any Maturity Shares are to be issued, the Company shall (a) provided that the Company's transfer agent (the "**Transfer Agent**"), if any, is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Maturity Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the Maturity Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the Maturity Date, a certificate, registered in the name of the Holder or its designee, for the number of Maturity Shares to which the Holder shall be entitled. When any cash is to be paid on the Maturity Date, the Company shall pay such cash to the Holder by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock pursuant to this Section 1; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(2) INTEREST.

(a) Interest on this Note shall accrue as described below at the applicable Interest Rate on any outstanding Principal and shall be computed on the basis of a 360-day year comprised of twelve 30-day months and shall be payable in arrears on each May 1 and November 1 (each, an "**Interest Date**"). Interest on this Note shall be comprised of Shares/Cash Interest (as defined below) and PIK Interest.

(i) Shares/Cash Interest. Interest as described in this Section 2(a)(i) ("**Shares/Cash Interest**") shall commence accruing on the Amendment and Restatement Date at a rate of 5.00% per annum (the "**Shares Interest Rate**") and shall be payable on each Interest Date to the record holder of this Note on the applicable Interest Date in shares of Common Stock ("**Interest Shares**") so long as there has been no Equity Conditions Failure or a Fundamental Change under paragraph (1) or (2) of the definition of Fundamental Change provided in Section 25 (a "**Change of Control**") during the period from the applicable Interest Notice Date (as defined below) through the applicable Interest Date; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay Shares/Cash Interest on any Interest Date in cash ("**Cash Interest**") at a rate of 3.25% per annum (together with the Shares Interest Rate, the "**Shares/Cash Interest Rate**") or in a combination of Cash Interest and Interest Shares. The Company shall deliver a written notice (each, an "**Interest Election Notice**") to the Holder and each holder of Other Notes on or prior to the applicable Interest Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Interest Notice Date**") which notice (i) either (a) confirms that Shares/Cash Interest to be paid on such Interest Date shall be paid entirely in Interest Shares, or (b) elects to pay Shares/Cash Interest on such Interest Date as Cash Interest or a combination of Cash Interest and Interest Shares and specifies the amount of Shares/Cash Interest that shall be paid as Cash Interest and the amount of Shares/Cash Interest, if any, that shall be paid in Interest Shares which amounts, when added together, must equal the applicable Shares/Cash Interest due on such Interest Date, and (ii) if Shares/Cash Interest is to be paid, in whole or in part, in Interest Shares, certifies that there has been no Equity Conditions Failure or Change of Control as of such Interest Notice Date. Any Interest Election Notice shall apply to the immediately following Interest Date and will, absent a contrary statement therein, apply to all future Interest Dates, unless the Company delivers with respect to any subsequent Interest Date an Election Notice on or prior to the applicable Interest Notice Date. If there is an Equity Conditions Failure or Change of Control as of the Interest Notice Date, then unless the Company has elected to pay such Shares/Cash Interest as Cash Interest, the applicable Interest Election Notice shall indicate that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If the Company confirmed (or is deemed to have confirmed by operation of this Section 2) the payment of the applicable Shares/Cash Interest in Interest Shares, in whole or in part, and if there was no Equity Conditions Failure or Change of Control as of the applicable Interest Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure or Change of Control in connection with such Shares/Cash Interest payment in Interest Shares by operation of this Section 2) but an Equity Conditions Failure or Change of Control occurred between the applicable Interest Notice Date and any time prior to the applicable Interest Date (an "**Interest Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If there is an Equity Conditions Failure or Change of Control (which such Equity Conditions Failure or Change of Control is not waived in writing by the Holder) during such Shares/Cash Interest Interim Period, then at the option of the Holder, the Holder may require the Company to pay the amount of Shares/Cash Interest payable on the applicable Interest Date as Cash Interest. If any portion of Shares/Cash Interest for a particular Interest Date shall be paid in Interest Shares, then on the Interest Date, the Company shall issue to the Holder, in accordance with Section 2(b), such number of shares of Common Stock equal to (a) the amount of Shares/Cash Interest payable on the applicable Interest Date in Interest Shares divided by (b) the Interest Share Price with respect to such Interest Date with any fractional share amounts rounded up to the nearest whole number of shares. All Interest Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver an Interest Election Notice in accordance with this Section 2(a), then the Company shall be deemed to have delivered an irrevocable Interest Election Notice confirming the payment of Shares/Cash Interest in Interest Shares and shall be deemed to have certified that in connection with the delivery of Interest Shares on the applicable Interest Date no Equity Conditions Failure or Change of Control has occurred. Except as expressly provided in this Section 2, the Company shall pay the applicable Shares/Cash Interest in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 2 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Interest Shares and/or Cash Interest hereunder.

(ii) PIK Interest. In addition to the Cash/Interest accruing pursuant to Section 2(a)(i), Interest as described in this Section 2(a)(ii) ("**PIK Interest**") shall commence accruing on the Amendment and Restatement Date at a rate of 2.75% per annum (the "**PIK Interest Rate**" and, together with the Shares/Cash Interest Rate, the "**Interest Rate**") and shall be payable in kind on each Interest Date following the Amendment and Restatement Date to the record holder of this Note on the applicable Interest Date by having the outstanding principal amount of this Note automatically increase on such Interest Date by the amount of such PIK Interest.

(b) When any Interest Shares are to be issued on an Interest Date, the Company shall (a) provided that the Transfer Agent, if any, is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of Interest Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the applicable Interest Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Interest Date, a certificate, registered in the name of the Holder or its designee, for the number of Interest Shares to which the Holder shall be entitled. When any Cash Interest is to be paid on an Interest Date, the Company shall pay such Cash Interest to the Holder, in cash by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock as Interest pursuant to this Section 2; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(3) PURCHASE.

(a) Repurchase at Option of Holder upon a Fundamental Change.

If there shall occur a Fundamental Change at any time prior to the Maturity Date, then the Holder shall have the right, at the Holder's option, to require the Company to repurchase for cash all or any portion of this Note that is an integral multiple of $1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days and not more than 35 Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price, in cash, equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon at the cash interest rate to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). Repurchases under this Section 3(a) shall be made, at the option of the Holder, upon:

(A) delivery to the Company by the Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form attached as Exhibit II hereto on or prior to the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date; and

(B) delivery of this Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements, if any), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3(a) only if the Note so delivered to the Company shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(I) the certificate number of this Note to be delivered for repurchase;

(II) the portion of the principal amount of this Note to be repurchased, which must be $1,000 or an integral multiple thereof; and

(III) that this Note is to be repurchased by the Company pursuant to the applicable provisions of this Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3(a) shall be consummated by the payment of the Fundamental Change Repurchase Price pursuant to Section 3(c).

Notwithstanding anything herein to the contrary, if the Holder delivers to the Company the Fundamental Change Repurchase Notice contemplated by this Section 3(a), the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3(b).

On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide notice (the "**Fundamental Change Company Notice**") to the Holder and all holders of the Other Notes of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:

(A) the events causing the Fundamental Change;

(B) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case, the effective date of the Make-Whole Fundamental Change;

(C) the last date on which the Holder may exercise the repurchase right pursuant to this Section 3;

(D) the Fundamental Change Repurchase Price;

(E) the Fundamental Change Repurchase Date;

(F) the applicable Conversion Rate, and, if applicable, any adjustments to the applicable Conversion Rate;

(G) that the portion of this Note with respect to which a Fundamental Change Repurchase Notice has been delivered by the Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Note;

(H) that the Holder must exercise the repurchase right on or prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date (the "**Fundamental Change Expiration Time**");

(I) that the Holder shall have the right to withdraw any portion of this Note surrendered prior to the Fundamental Change Expiration Time; and

(J) the procedures that the Holder must follow to require the Company to repurchase all or any portion of this Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of this Note pursuant to this Section 3(a).

Notwithstanding the foregoing, the Company shall not be required to repurchase this Note in accordance with this Section 3 if a third party or any Subsidiary of the Company makes an offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3 and purchases this Note and all Other Notes validly tendered and not withdrawn under such purchase offer.

(b) Withdrawal of Fundamental Change Repurchase Notice.

(i) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Company in accordance with this Section 3(b) at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(A) the principal amount of this Note with respect to which such notice of withdrawal is being submitted,

(B) the certificate number of this Note, and

(C) the principal amount, if any, of this Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000.

(c) Payment of Fundamental Change Repurchase Price.

(i) The Company shall make payment for this Note surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) on the later of (x) the Fundamental Change Repurchase Date with respect to this Note (provided the Holder has satisfied the conditions in Section 3(a)) and (y) the time of the delivery of this Note to the Company by the Holder in the manner required by Section 3(a) as provided in Section 18(b).

(ii) If the Company makes the required payment of the Fundamental Change Repurchase Price by 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, then (x) such portion of this Note will cease to be outstanding, (y) interest will cease to accrue on such portion of this Note, and (z) all other rights of the Holder will terminate with respect to such portion of this Note with respect to which payment has been received by the Holder (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, upon delivery of this Note), whether or not this Note has been delivered to the Company.

(iii) Upon any surrender of this Note that is to be repurchased in part pursuant to Section 3(a), the Company shall execute and deliver to the Holder a new Note equal in principal amount to the unrepurchased portion of this Note surrendered in accordance with Section 12.

(4) REDEMPTION. If, at any time, a Person acquires voting Common Stock and, as a result, holds at least 49% of the issued and outstanding voting Common Stock (the "**Company Optional Redemption Trigger Event**"), the Company shall have the right to redeem all, but not less than all, of the Notes as designated in the Company Optional Redemption Notice on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The Notes subject to redemption pursuant to this Section 4 shall be redeemed by the Company on the Company Optional Redemption Date in cash by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company at a price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon (the "**Company Optional Redemption Price**"). The Company may exercise its right to require redemption under this Section 4 by delivering within not more than three (3) Trading Days following a Company Optional Redemption Triggering Event a written notice thereof by facsimile or electronic mail and overnight courier to the Holder and all, but not less than all, of the holders of the Other Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of the Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (i) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**"), which date shall not be less than five (5) Trading Days nor more than ten (10) Trading Days following the Company Optional Redemption Notice Date and (ii) state the aggregate principal amount of this Note and the Other Notes subject to Company Optional Redemption from the Holder and all of the holders of the Other Notes pursuant to this Section 4 (and analogous provisions under the Other Notes) on the Company Optional Redemption Date. To the extent redemptions required by this Section 4 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of this Note under this Section 4, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. If the Company elects to cause a Company Optional Redemption of this Note pursuant to this Section 4, then it must simultaneously take the same action in the same proportion with respect to any Other Notes.

(5) CONVERSION. At any time or times on or after the Amendment and Restatement Date, this Note shall be convertible into shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 5.

(a) Conversion Right. Subject to the provisions of Section 5(d) and Section 5(e), at any time or times after the Amendment and Restatement Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into Conversion Consideration (as defined in Section 5(c)(ii)(A)) in accordance with Section 5(c), at the Conversion Rate (as defined below); provided, that the Holder shall not be entitled to elect any conversion unless the Company would be permitted to settle the related Conversion Amount in the form of a Physical Settlement in accordance with Section 5(d)(i). The Company shall pay any and all transfer, stamp and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(b) Conversion Rate. The conversion rate with respect to a conversion of any Conversion Amount pursuant to this Section 5 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the portion of the Principal to be converted.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $1.00 per share, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Settlement Method. Upon any conversion of this Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this Section 5(c)(i), either (x) subject to Section 5(d), shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Physical Settlement**"); (y) solely cash (a "**Cash Settlement**"); or (z) subject to Section 5(d), a combination of cash and shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Combination Settlement**") (each, a "**Settlement Method**").

The Company will have the right to elect the Settlement Method applicable to any conversion of this Note; provided, however, that:

(A) subject to clause (B) below, if the Company elects a Settlement Method, then the Company will provide written notice of such Settlement Method to the Holder no later than the Close of Business on the Business Day immediately after such Conversion Date (as defined in Section 5(c)(iii));

(B) if the Company does not timely elect a Settlement Method with respect to a conversion of this Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a default or an Event of Default); and

(C) if the Company timely elects Combination Settlement with respect to a conversion of this Note but does not timely notify the Holder of this Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be $1,000 per $1,000 principal amount of this Note (and, for the avoidance of doubt, the failure to timely make such notification will not constitute a default or Event of Default).

(ii) Conversion Consideration.

(A) Subject to clause (B) below, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of Conversion Amount to be converted will be as follows:

(x) if Physical Settlement applies to such conversion, subject to clause (B) below and subject to Section 5(d), a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(y) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each Trading Day in the Observation Period for such conversion; or

(z) if Combination Settlement applies to such conversion, consideration consisting, subject to clause (B) below and subject to Section 5(d), of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each Trading Day in such Observation Period.

(B) If Physical Settlement or Combination Settlement applies to any conversion and the number of shares of Common Stock deliverable pursuant to clause (A) above upon such conversion is not a whole number, then such number will be rounded up to the nearest whole number.

(C) Blocker Notice. Notwithstanding the foregoing, if (i) the Company has elected a Physical Settlement or a Combination Settlement pursuant to the provisions set forth in this Section 5(c) and (ii) the Company is permitted to elect such Settlement Method if not for Section 5(d)(i), the Company may request that the Holder provide written notice to the Company confirming that such settlement will not conflict with Section 5(d)(i), and the Holder shall promptly respond to such request. If the Holder provides such written notice to the Company, the Company shall be permitted to rely on such notice.

(iii) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company and (B) if required by Section 5(c)(iv) but without delaying the Company's requirement to deliver Conversion Consideration on the Delivery Date (as defined below), surrender this Note to a common carrier for delivery to the Company as soon as practicable on or following such date (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction). On or before the first (1st) Business Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Transfer Agent. In the case of a Physical Settlement or a Combination Settlement, on or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice (the "**Delivery Date**"), the Company shall (x) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal At Custodian system or (y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled. In the case of a Cash Settlement or a Combination Settlement, the Company shall deliver to the Holder any cash included in the Conversion Consideration on the Delivery Date as provided in Section 18(b). If this Note is physically surrendered for conversion as required by Section 5(c)(iv) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive any shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date, irrespective of the date such Conversion Shares are credited to the Holder's account with DTC or the date of delivery of the certificates evidencing such Conversion Shares, as the case may be.

(iv) Registration; Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the Principal amount of the Notes (and stated interest thereon) held by such holders (the "**Registered Notes**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes, including, without limitation, the right to receive payments of Principal and Interest, if any, hereunder, notwithstanding notice to the contrary. A Registered Note may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a request to assign or sell all or part of any Registered Note by a Holder, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate Principal amount as the Principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 11 to the extent such transfer is not prohibited by Section 11. Notwithstanding anything to the contrary in this Section 5(c)(iv) or the limitations of Section 11, a Holder may assign any Note or any portion thereof to an Affiliate of such Holder or a Related Fund of such Holder without delivering a request to assign or sell such Note to the Company and the recordation of such assignment or sale in the Register (a "**Related Party Assignment**"); provided, that (x) the Company may continue to deal solely with such assigning or selling Holder unless and until such Holder has delivered a request to assign or sell such Note or portion thereof to the Company for recordation in the Register; (y) the failure of such assigning or selling Holder to deliver a request to assign or sell such Note or portion thereof to the Company shall not affect the legality, validity, or binding effect of such assignment or sale and (z) such assigning or selling Holder shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register (the "**Related Party Register**") comparable to the Register on behalf of the Company, and any such assignment or sale shall be effective upon recordation of such assignment or sale in the Related Party Register. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion.

(v) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice with respect to this Note and one or more holder of Other Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of this Note and the Other Notes submitted for conversion, the Company, subject to Section 5(d), shall convert from the Holder and each holder of Other Notes electing to have this Note or the Other Notes converted on such date a pro rata amount of such holder's portion of this Note and its Other Notes submitted for conversion based on the Principal amount of this Note and the Other Notes submitted for conversion on such date by such holder relative to the aggregate Principal amount of this Note and all Other Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable or the amount of cash payable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock and pay to the Holder the amount of cash not in dispute and resolve such dispute in accordance with Section 17.

(vi) Mandatory Conversion. If at any time, (i) the arithmetic average of the Last Reported Sale Price of the Common Stock for any twenty (20) consecutive Trading Days (the "**Mandatory Conversion Measuring Period**") equals or exceeds 150% of the Conversion Price on the Amendment and Restatement Date (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Amendment and Restatement Date) and (ii) no Equity Conditions Failure has occurred, the Company shall have the right to require the Holder and all, but not less than all, holders of Other Notes to convert all or any portion of the Conversion Amount then remaining under this Note and the Other Notes, as designated in the Mandatory Conversion Notice on the Mandatory Conversion Date (each as defined below) in accordance with Section 5(c) hereof at the Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "**Mandatory Conversion**") pursuant to the Settlement Method elected in accordance with Section 5(c)(i). The Company may exercise its right to require conversion under this Section 5(c)(vi) by delivering within not more than three (3) Trading Days following the end of such Mandatory Conversion Measuring Period a written notice thereof by facsimile and overnight courier to all, but not less than all, of the holders of Notes and the Transfer Agent (the "**Mandatory Conversion Notice**" and the date the Holder and all the holders of the Other Notes received such notice is referred to as the "**Mandatory Conversion Notice Date**"). The Mandatory Conversion Notice shall be irrevocable. The Mandatory Conversion Notice shall (i) state (a) the Trading Day on which the Mandatory Conversion shall occur, which Trading Day shall not be less than ten (10) Trading Days nor more than twelve (12) Trading Days following the Mandatory Conversion Notice Date (the "**Mandatory Conversion Date**"), (b) the aggregate Conversion Amount of the Notes which the Company has elected to be subject to Mandatory Conversion from the Holder and all of the holders of the Other Notes pursuant to this Section 5(c)(vi) (and analogous provisions under the Other Notes) and (c) the Settlement Method applicable to such Mandatory Conversion and number of shares of Common Stock to be issued and/or the amount of cash to be delivered to the Holder on the Mandatory Conversion Date and (ii) certify that there has been no Equity Conditions Failure as of the Mandatory Conversion Notice Date. If the Company confirmed that there was no such Equity Conditions Failure as of the Mandatory Conversion Notice Date but an Equity Conditions Failure occurs between the Mandatory Conversion Notice Date and any time through the Mandatory Conversion Date (the "**Mandatory Conversion Interim Period**"), the Company shall provide the Holder and each holder of Other Notes a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Mandatory Conversion Interim Period, then the Mandatory Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Conversion Amount subject to the Mandatory Conversion and the Holder shall be entitled to all the rights of a holder of this Note with respect to such Conversion Amount. Notwithstanding anything to the contrary in this Section 5(c)(vi), until the Mandatory Conversion has occurred, the Conversion Amount subject to the Mandatory Conversion may be converted, in whole or in part, by the Holder pursuant to Sections 5(c)(i), (ii) and (iii). All Conversion Amounts converted by the Holder after the Mandatory Conversion Notice Date shall reduce the Conversion Amount of this Note required to be converted on the Mandatory Conversion Date. If the Company elects to cause a Mandatory Conversion pursuant to this Section 5(c)(vi), then it must simultaneously take the same action in the same proportion with respect to the Other Notes.

(d) Beneficial Ownership Limitation.

(i) Beneficial Ownership. The Company shall not deliver any shares of Common Stock pursuant to this Note, to effect the conversion of any portion of this Note or otherwise, and the Holder shall not have the right to convert any portion of this Note, to the extent that after giving effect to such delivery, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such delivery other than in connection with (x) the delivery of Maturity Shares pursuant to Section 1 or (y) a Mandatory Conversion pursuant to Section 5(c)(vi). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable pursuant to this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d)(i). For purposes of this Section 5(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 5(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty- first (61st)day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 4.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61St) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. In connection with any conversion, for purposes of this Section 5(d)(i), the Company shall be permitted to rely on a notice delivered by the Holder pursuant to Section 5(c)(ii)(C) in connection with such conversion that represents that the settlement of such conversion complies with this Section 5(d)(i).

(ii) Principal Market Regulation. The Company shall not be obligated to issue any shares of Common Stock pursuant to the terms of this Note or any Other Notes, and the Holder shall not have the right to receive pursuant to the terms of this Note or any Other Notes any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the terms of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market , taking into account the Other Oasis Notes and any integrated transactions for purposes of the rules or regulations of the Principal Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount. Until such approval is obtained, no holder that acquires Notes pursuant to the Transaction Agreement (the "**Initial Holders**") shall be issued in the aggregate, pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the Principal amount of Notes issued to such Initial Holder pursuant to the Transaction Agreement on the Closing Date (as defined in the Transaction Agreement) and the denominator of which is the aggregate principal amount of all Notes issued to the Initial Holders pursuant to the Transaction Agreement on the Closing Date (with respect to each Initial Holder, the "**Exchange Cap Allocation**"). In the event that any Initial Holder shall sell or otherwise transfer any of such Initial Holder's Notes, the transferee shall be allocated a pro rata portion of such Initial Holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder of Notes shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the aggregate principal amount of the Notes then held by each such holder.

(e) [Intentionally omitted.]

(f) Increased Conversion Rate Applicable to Conversions in Connection with Make-Whole Fundamental Changes.

(i) If the Holder elects to convert this Note at any time from, and including, the Effective Date (as defined below) of a Make-Whole Fundamental Change until, and including, the close of business on the second Scheduled Trading Day immediately preceding the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change, or the 35th Business Day immediately following the Effective Date of such Make-Whole Fundamental Change (in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"), the applicable Conversion Rate shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described in this Section 5(f). The Company will notify the Holder and the holders of the Other Notes of the anticipated Effective Date of the Make-Whole Fundamental Change and issue a press release as soon as practicable after the Company first determines the anticipated Effective Date of such Make-Whole Fundamental Change, and use commercially reasonable efforts to make such determination in time to deliver written notice 25 Scheduled Trading Days in advance of the anticipated Effective Date; provided, that, the Company will not be required to give written notice or issue a press release more than 25 Scheduled Trading Days in advance of the anticipated Effective Date.

(ii) The number of Additional Shares by which the Conversion Rate will be increased for conversions that occur during the Make-Whole Fundamental Change Period will be determined by reference to the table set forth below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed paid) per share of the Company's Common Stock in the Make-Whole Fundamental Change. If holders of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on and including the Trading Day preceding the Effective Date of the Make-Whole Fundamental Change.

(iii) The following table sets forth the number of Additional Shares, if any, by which the Conversion Rate will be increased for each Stock Price and Effective Date set forth in the table below:

Make-Whole Conversion Rate Adjustment
(per $1,000 Conversion Amount)

	Effective Date					
Stock Price	**August 7, 2019**	**May 1, 2020**	**May 1, 2021**	**May 1, 2022**	**May 1, 2023**	**July 3, 2023**
$ 0.85	180.64	180.64	180.64	180.64	180.64	180.64
$ 0.90	171.78	173.11	170.89	159.00	119.44	111.11
$ 1.00	127.90	127.30	121.80	105.30	50.70	0
$ 1.12	90.27	88.57	81.52	64.11	15.00	0
$ 1.25	62.08	59.92	52.88	37.28	3.92	0
$ 1.38	42.39	40.29	33.99	21.30	1.30	0
$ 1.50	0	0	0	0	0	0

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(x) If the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(y) If the Stock Price is greater than $1.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(z) If the Stock Price is less than $0.85 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(iv) The Stock Prices set forth in the first column of the table in Section 5(f)(iii) shall be adjusted as of any date on which the Conversion Rate is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 5(g).

(v) As soon as practicable after the Effective Date of any Make-Whole Fundamental Change but in no event later than five Trading Days after such Effective Date, the Company shall mail to the Holder and all holders of the Other Notes written notice of, and shall issue a press release announcing, the Effective Date of such Make-Whole Fundamental Change and make such press release available on the Company's web site. If applicable, such notice and press release shall also specify the amount, if any, by which the Conversion Rate shall be increased in accordance with the provisions of this Section 5(f) and the period in which this Note may be converted at the increased Conversion Rate.

(vi) Nothing in this Section 5(f) shall prevent an adjustment to the Conversion Rate pursuant to Section 5(g).

(vii) If the Holder elects to convert this Note prior to the Effective Date of the Make-Whole Fundamental Change, the Holder shall not be entitled to any adjustment to the Conversion Rate or any Additional Shares under this Section 5(f) in connection with such conversion.

(g) Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company will not make any adjustment to the Conversion Rate if the Holder participates, as a result of holding this Note, in any of the transactions described in this Section 5(g) at the same time as holders of the Common Stock participate, without having to convert this Note as if such Holder held, for each $1,000 Principal amount of this Note, a number of shares of Common Stock equal to the Conversion Rate in effect at the time any such adjustment would otherwise be required.

(i) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all of the shares of Common Stock, or if the Company effects a share split or share combination of the Common Stock, the applicable Conversion Rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR_0= the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

OS_0= the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be; and

OS = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 5(g)(i) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0= the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

OS_0= the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

For purposes of this Section 5(g)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the applicable ten-consecutive-Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property to all or substantially all holders of its Common Stock other than (x) dividends or distributions (including share splits) or rights, options or warrants covered by Section 5(g)(i) or Section 5(g)(ii), (y) dividends or distributions paid exclusively in cash, and (z) Spin-Offs to which the provisions set forth below in this Section 5(g)(iii) shall apply, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0= the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution.

SP_0= the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution; provided that if "FMV" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provisions shall be made so that each Holder shall have the right to receive on conversion in respect of each $1,000 principal amount of Principal outstanding under this Note, in addition to the shares of Common Stock to which such Holder shall be entitled, the amount and kind of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other of the Company's assets or property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the record date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines "FMV" for purposes of this Section 5(g)(iii) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 5(g)(iii) where there has been a dividend or other distribution on all or substantially all shares of the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are or will be when issued listed on a securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0= the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"), and

MP_0= the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(g)(iii) shall be made immediately after the opening of business on the day after the last day of the Valuation Period, but shall become effective as of the opening of business on the Ex-Dividend Date for the Spin-Off. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Ex- Dividend Date of any Spin-Off, references in the portion of this Section 5(g)(iii) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the Conversion Date for such conversion.

For the purposes of this Section 5(g)(iii) (and subject in all respect to Section 5(1)), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 5(g) (and no adjustment to the Conversion Rate under this Section 5(g) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 5(g)(iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Closing Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 5(g)(iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 5(g)(iii), Section 5(g)(i), and Section 5(g)(ii), any dividend or distribution to which this Section 5(g)(iii) is applicable that also includes shares of Common Stock to which Section 5(g)(i) applies, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 5(g)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 5(g) (iii) applies (and any Conversion Rate adjustment required by this Section 5(g)(iii) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 5(g)(i) and Section 5(g)(ii) with respect to such dividend or distribution shall then be made), except that if determined by the Company (A) "the Ex-Dividend Date for such distribution" and "the Ex-Dividend Date relating to such distribution of such rights, options or warrants" within the meaning of Section 5(g)(i) and Section 5(g)(ii), as the case may be, shall be deemed to be the Ex-Dividend Date for such dividend or distribution for purposes of Section 5(g)(iii), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be" within the meaning of Section 5(g)(i) or "outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution" within the meaning of Section 5(g)(ii).

(iv) If the Company makes or pays cash dividends or distributions to all or substantially all holders of its outstanding Common Stock in any fiscal quarter, the applicable Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0= the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0= the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; provided that if "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each $1,000 principal amount of Principal outstanding under this Note, the amount of cash such holder would have received had the Holder owned a number of shares equal to the Conversion Rate on the record date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 5(g)(iv), in the event of any reclassification of the Common Stock, as a result of which this Note becomes convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 5(g)(iv), references in this Section to one share of Common Stock or Last Reported Sale Prices of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which this Note is then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(v) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and if the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where

CR = the applicable Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0= the number of shares of Common Stock outstanding immediately prior to the time (the "**Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer); OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender offer or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

Such adjustment under this Section 5(g)(v) shall become effective at the opening of business on the Trading Day next succeeding the Expiration Date. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5(g)(v) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 5(g)(v).

(vi) For purposes of this Section 5(g), the term "**record date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(vii) In addition to those required by clauses (i), (ii), (iii), (iv) and (v) of this Section 5(g), and to the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Stock Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(viii) The Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(ix) All calculations and other determinations under this Section 5 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share. The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (x) upon any conversion and (y) on each of the 22 Scheduled Trading Days immediately preceding the Maturity Date.

(x) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Holder and all holders of the Other Notes an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment and issue a press release containing the relevant information (and make such press release available on the Company's web site). Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(xi) For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(xii) Notwithstanding this Section 5(g) or any other provision of this Note, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, the close of business on the third Trading Day immediately following the relevant Conversion Date, the Board of Directors may make adjustments to the Conversion Rate and the number of shares of Common Stock issuable upon conversion of this Note as are necessary or appropriate to effect the intent of this Section 5(g) and the other provisions of this Section 5 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 5(g)(xii) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(xiii) Except as set forth in this Section 5, the Company shall not adjust the Conversion Rate. The applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of the Common Stock under any plan;

(B) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of the Company's Subsidiaries;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (B) of this subsection and outstanding as of the Closing Date;

(D) for a change in the par value of the Common Stock;

(E) for accrued and unpaid interest; or

(F) except as stated herein, for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities.

(h) Effect of Reclassification, Consolidation, Merger or Sale.

(i) Upon the occurrence of

(A) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 5(g)(i)),

(B) any consolidation, merger, combination or binding share exchange involving the Company, or

(C) any sale, lease or conveyance of all or substantially all of the property and assets of the Company to any other Person,

(any such event a "**Merger Event**") in each case as a result of which the Common Stock would be converted into cash, securities or other property or assets with respect to or in exchange for such Common Stock, then at the effective time of such transaction, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that at and after the effective time of such transaction, the right to convert this Note will be changed into a right to convert it as set forth in this Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversation Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction (the "**Reference Property**"), subject to the provisions of Section 5(h)(ii). The Company shall not become a party to any such transaction unless its terms are consistent with this Section 5(h). Such amendment shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5 in the judgment of the Board of Directors or the board of directors of the successor Person and acceptable to the Holder. If, in the case of any Merger Event the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such amendment shall also be executed by such other Person with respect to the delivery of Reference Property upon conversion. For purposes of the foregoing, if any Merger Event causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which this Note will be convertible as set forth in this Note shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock (or a plurality thereof if holders of Common Stock are entitled to make multiple elections pursuant to the applicable Merger Event) that affirmatively make such an election (the "**Weighted Average Consideration**").

(ii) With respect to each $1,000 Principal amount of this Note surrendered for conversion after the effective date of any Merger Event, the Company shall pay the Conversion Consideration in units of Reference Property (each consisting of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event shall have received (or shall be deemed to have received) in such Merger Event) in accordance with Section 5(c) subject to the foregoing. The Company shall deliver to the converting Holder a number of units of Reference Property equal to (1) the aggregate Conversion Amount, divided by $1,000, multiplied by (2) the then-applicable Conversion Rate.

(iii) In the event that this Note becomes convertible into Reference Property pursuant to this Section 5(h), the Company shall notify Holder in writing. If applicable, the Company shall notify the Holder in writing of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(iv) Notwithstanding any of the provisions of Section 5(g), if this Section 5(h) applies to any event or occurrence, Section 5(g) shall not apply.

(v) The above provisions of this Section shall similarly apply to successive Merger Events.

(i) Taxes on Shares Issued.

If a Holder submits this Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the Holder shall pay any such tax that is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Company may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Company receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude, subject to Section 24, any tax withholding required by law or regulations.

(j) Reservation of Shares; Shares to be Fully Paid; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion.

The Company covenants that all shares of Common Stock that may be issued upon conversion of this Note shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of this Note on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

(k) Notice to Holder Prior to Certain Actions.

In case:

(i) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 5(g); or

(ii) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or

(iii) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company; the Company shall deliver, by electronic transmission, to the Holder, as promptly as practicable but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

(l) Stockholder Rights Plans.

To the extent that the Company has a stockholder rights plan or other "poison pill" in effect upon conversion of this Note, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If, however, prior to the time of conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the Holder would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or other assets or property having a fair market value of the rights as provided in Section 5(g)(iii), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(m) Conversion Rate Resets. On each of February 9 and August 9 (each, a "**Reset Date**"), with the first Reset Date being February 9, 2020, the Conversion Rate shall be reset such that the Conversion Price on and after each such Reset Date shall equal 105% of the arithmetic average of the Daily VWAPs for the five (5) consecutive Trading Days immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period); provided, that the minimum Conversion Price upon any such reset shall be the greater of (i) the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding such Reset Date and (ii) 30% of the Last Reported Sale Price of the Common Stock on the Transaction Agreement Date (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Transaction Agreement Date, but, for the avoidance of doubt, without giving effect to any adjustment pursuant to this Section 5(m)); provided, further, that the Conversion Price upon any such reset shall not be greater than the Conversion Price in effect immediately prior to such Reset Date.

(6) DEFAULTS AND REMEDIES.

(a) Event of Default. An "**Event of Default**" wherever used herein means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) a default in the payment in respect of the principal amount of this Note when the same becomes due and payable whether on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(ii) a default in the payment of any interest upon this Note when it becomes due and payable, and continuance of such default for a period of 30 days; and

(iii) the failure to comply with the obligation to convert Note upon exercise of the Holder's conversion right and such failure continues for 30 days;

(iv) failure by the Company to provide a Fundamental Change Repurchase Notice within the time required to provide such notice as set forth in Section 3(a) hereof within the time required to provide such notice as forth in the relevant Section and such failure continues for five days;

(v) default in the performance, or breach, of any covenant or agreement by the Company in this Note (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (iv) of this Section 6(a)), and continuance of such default or breach for a period of 60 consecutive days after written notice thereof has been given to the Company by the Holder;

(vi) an event of default (or comparable default) under any bonds, debentures or other instruments under which there may be issued evidences of indebtedness (other than this Note) by the Company or any of its Subsidiaries that is a Significant Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least $25 million, whether such indebtedness now exists or shall hereafter be created, which event of default (or comparable default) shall have resulted in the acceleration of the maturity of at least $25 million of such indebtedness prior to its express maturity or shall constitute a failure to pay at least $25 million of such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto and such event of default (or comparable default) shall not have been rescinded or annulled or such indebtedness shall not have been discharged and such event of default (or comparable default) continues for a period of 60 consecutive days after written notice to the Company by the Holder;

(vii) the entry against the Company or any of its Subsidiaries that is a Significant Subsidiary of a final judgment or final judgments for the payment of money in an aggregate amount in excess of $25 million (excluding any amounts covered by insurance), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 days after (x) the date on which the right to appeal or petition for review thereof has expired if no such appeal or review has commenced, or (y) the date on which all rights to appeal or petition for review have been extinguished;

(viii) the Company or any Subsidiary of the Company that is a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a custodian of it or for all or substantially all of its property; or

(D) makes a general assignment for the benefit of its creditors; or

(ix) a court of competent jurisdiction enters an order or decree under the Bankruptcy Law that:

(A) is for relief against the Company or any Subsidiary of the Company that is a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any Subsidiary of the Company that is a Significant Subsidiary or for all or substantially all of the property and assets of the Company or any such Subsidiary; or

(C) orders the liquidation of the Company or any Subsidiary of the Company that is a Significant Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) Acceleration.

(i) In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company)), unless the Principal amount of this Note shall have already become due and payable, the Holder of this Note by notice in writing to the Company may declare 100% of the principal of and accrued and unpaid interest on this Note to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Note contained to the contrary notwithstanding. If an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, the principal of this Note and accrued and unpaid interest shall be immediately due and payable.

After a declaration of acceleration with respect to this Note, but before a judgment or decree for payment of the money due has been obtained by the Holder as hereinafter in this Section 6 provided, the Holder, by written notice to the Company, may rescind and annul such declaration and its consequences if:

(A) the Company has paid or deposited with the Holder a sum sufficient to pay

(1) all sums paid or advanced by the Holder under this Note and the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel,

(2) all overdue interest on this Note,

(3) the Principal amount of this Note which has become due otherwise than by such declaration of acceleration and interest thereon at the cash interest rate borne by this Note, and

(4) to the extent that payment of such interest is lawful, interest upon overdue interest at the cash interest rate borne by this Note;

(B) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(C) all defaults or Events of Default, other than the non-payment of principal of and interest on this Note which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6(i).

No such rescission shall affect any subsequent default or impair any right consequent thereon.

(ii) Notwithstanding the foregoing and notwithstanding anything in this Note to the contrary, if the Company so elects, the sole remedy of Holder for an Event of Default relating to the Company's failure to comply with its reporting obligations as required under Section 9(b) of this Note shall, for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6(b)(i)), consist exclusively of the right to receive Additional Interest on this Note at an annual rate equal to (x) 0.25% of the outstanding principal amount of this Note for the first 90 days an Event of Default is continuing in such 180-day period, and (y) 0.50% of the outstanding principal amount of this Note for the remaining 90 days an Event of Default is continuing in such 180-day period. Additional Interest shall be payable in arrears on each Interest Date following the occurrence of such Event of Default in the same manner as regular interest on this Note. On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), this Note will be subject to acceleration as provided in Section 6(b)(i). The provisions set forth in this Section 6(b)(ii) shall not affect the rights of the Holder in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest upon an Event of Default in accordance with the provisions of this paragraph, this Note will be subject to acceleration as provided in Section 6(b)(i).

The Company may elect to pay Additional Interest as the sole remedy under this Section 6(b)(ii) by giving written notice to the Holder of such election on or before the close of business on the 5th Business Day after the date on which such Event of Default otherwise would occur. If the Company fails to timely give such notice or pay Additional Interest, this Note will be immediately subject to acceleration as provided in Section 6(b)(i).

Whenever in this Note there is mentioned, in any context, the payment of interest on, or in respect of, this Note, such mention shall be deemed to include mention of the payment of "**Additional Interest**" provided for in this Section 6(b)(ii) to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of such sections, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

(c) Collection of Indebtedness and Suits for Enforcement.

The Company covenants that if (x) default is made in the payment of any interest on this Note when such interest becomes due and payable and such default continues for a period of 30 days, or (y) default is made in the payment of the principal of this Note on the Maturity Date thereof, the Company will, upon demand of the Holder, pay to the Holder the whole amount then due and payable on this Note for principal and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by this Note; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Holder may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Holder may in its discretion proceed to protect and enforce its rights under this Note by such appropriate private or judicial proceedings as the Holder shall deem most effectual to protect and enforce such rights, whether for the specific enforcement of any covenant or agreement in this Note or in aid of the exercise of any power granted herein, or to enforce any other proper remedy. No recovery of any such judgment upon any property of the Company shall affect or impair any rights, powers or remedies of the Holder.

(d) Holder May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, the Holder (irrespective of whether the principal of the this Note shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Holder shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of this Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Holder (including any claim for the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel) allowed in such judicial proceeding.

(e) Unconditional Right of Holder to Receive Payment and to Convert.

Notwithstanding any other provision of this Note, the right of the Holder to receive payment of the principal amount, interest, Fundamental Change Repurchase Price, if any, or Additional Interest, if any, in respect of this Note, on or after the respective due dates expressed in this Note (whether upon repurchase or otherwise), and to convert this Note in accordance with Section 5, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Section 5, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

(f) Restoration of Rights and Remedies.

If the Holder has instituted any proceeding to enforce any right or remedy under this Note and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Holder, then and in every such case the Company and the Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Holder shall continue as though no such proceeding had been instituted.

(g) Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(h) Delay or Omission Not Waiver.

No delay or omission of the Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Section 6 or by law to the Holder may be exercised from time to time, and as often as may be deemed expedient, by the Holder, as the case may be.

(i) Waiver of Past Defaults.

Subject to Section 6(e), the Holder may waive an existing or past Default or Event of Default and its consequences and rescind any acceleration with respect to this Note and its consequences, except a default or Event of Default and any related acceleration with respect to the payment of the principal of or any accrued but unpaid interest on any Security, the failure to repurchase this Note in accordance with the provisions of Section 3 or the failure by the Company to deliver, upon conversion of this Note, the Conversion Consideration. When a default or Event of Default is waived, it is cured and ceases to exist.

(j) Undertaking for Costs.

The Company and the Holder agree that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Note, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant, but the provisions of this Section 6(j) shall not apply to any suit instituted by the Holder.

(k) Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Section 6 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Note are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Note invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(7) NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

(8) RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note, the Other Notes equal to 100% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Amendment and Restatement Date. So long as any of this Note or the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock specified above in this Section 8(a) as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "**Required Reserve Amount**"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Transaction Agreement) or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer this Note or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the Holder and the remaining holders of Other Notes a, pro rata based on the Principal amount of this Note and the Other Notes then held by such holders.

(b) Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Stock and provide each shareholder with an information statement with respect thereto or (y) hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of Conversion Shares that the Company is unable to deliver pursuant to this Section 8, and (ii) the highest trading price of the Common Stock in effect at any time during the period beginning on the applicable Conversion Date and ending on the date the Company makes the payment provided for in this sentence.

(9) COVENANTS.

(a) Payment on this Note.

(i) The Company shall promptly make all payments in respect of this Note on the dates and in the manner provided in this Note. Accrued and unpaid interest on this Note that is payable (whether or not punctually paid or duly provided for) on any Interest Date shall be paid to the Holder. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal and interest at the annual rate borne by this Note compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the day preceding the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

(b) Reports by Company.

(A) The Company shall deliver to the Holder, within 15 days after it is required to file the same with the SEC, copies of all annual reports, quarterly reports and other documents that it files with the SEC pursuant to Sections 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). The Holder agrees that any such information, documents or reports filed with the SEC pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall constitute delivery of the same to the Holder; provided, however, that the Company shall promptly notify the Holder in writing of any such filing.

(B) During any period in which the Company is not subject to Section 13 or 15(d) under the Exchange Act, the Company will make available to the holders or beneficial holders of this Note or the Common Stock issued upon conversion and prospective purchasers, upon their request, the information, if any, required under Rule 144A(d)(4) under the Securities Act.

(C) If, at any time during the six-month period beginning on, and including, the date which is six months after the Closing Date and ending on the date which is the one year anniversary of the Closing Date, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), the Company shall pay a one-time Additional Interest payment in respect of this Note at the rate of 0.50% per annum of the principal amount of this Note outstanding for each day during such period for which the Company's failure to file has occurred and is continuing. The Company shall pay any Additional Interest pursuant to this Section 9(b)(C) on the next Interest Date to the record holder.

(c) Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.

(d) Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or accrued but unpaid interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such law had been enacted.

(e) [Intentionally omitted].

(f) [Intentionally omitted].

(g) Consolidation; Merger; Sale of Assets.

(i) Company May Consolidate, Etc., Only on Certain Terms.

(A) The Company shall not consolidate with or merge with or into, or convey, transfer, or lease all or substantially all of the Company's property or assets to, another Person, unless:

(I) the resulting, surviving or transferee Person (if other than the Company) shall be a corporation organized and validly existing under the laws of the United States of America or any State thereof or the District of Columbia, and such Person shall expressly assume, the due and punctual payment of the principal of and interest on this Note and the performance and observance of every covenant of this Note to be performed or observed on the part of the Company;

(II) immediately after giving effect to the transaction, no default or Event of Default shall have occurred and be continuing; and

(III) if the Company will not be the resulting or surviving Person, the Company shall have, at or prior to the effective date of such consolidation or merger or conveyance, transfer or lease, delivered to the Holder an Officer's Certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease complies with this Section 9(g) and, if an amendment to this Note is required in connection with such transaction, such amendment complies with this Section 9(g), and that all conditions precedent herein provided for relating to such transaction have been complied with.

(ii) Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any transfer or lease of all or substantially all of the Company's assets in accordance with Section 9(g)(i), the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Note with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Note.

(h) Redemption or Repurchase of Shares of Series A Preferred Stock. For so long as any of the Notes remain outstanding, the Company shall not redeem or repurchase any shares of Series A Preferred Stock without the prior written consent of the Required Holders, unless the Notes are substantially concurrently repaid, repurchased, redeemed, discharged or otherwise satisfied in full.

(10) VOTE TO ISSUE, OR CHANGE THE TERMS OF, NOTES. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

(11) TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, and any shares of Common Stock issued pursuant to this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company at any time.

(12) REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d) and subject to Section 5(c)(iv)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 5(c)(iv) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in Principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal and Interest of this Note, from the Issuance Date.

(13) REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Registration Rights Agreement and the Transaction Agreement at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(14) PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

(15) CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note.

(16) FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder within the time limits set forth herein shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(17) DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Last Reported Sale Price or the Daily VWAP or the arithmetic calculation of the Conversion Rate, the Conversion Price or any Redemption Price, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt, or deemed receipt, of the Conversion Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Last Reported Sale Price or the Daily VWAP to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed, or (b) the disputed arithmetic calculation of the Conversion Rate, Conversion Price or any Redemption Price to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. Absent bad faith by the Holder, the Company shall pay the expenses of such investment bank or accountant.

(18) NOTICES; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.12 of the Transaction Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Change, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Holder, shall initially be as set forth in the Transaction Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions, which wire transfer instructions shall be provided to the Company at least two (2) Business Days prior to any applicable payment date. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

(19) CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

(20) WAIVER OF NOTICE. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Transaction Agreement.

(21) GOVERNING LAW; JURISDICTION; JURY TRIAL. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, enforcement and performance of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Transaction Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

(22) SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(23) DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

(24) TAXES.

(i) Any and all payments by the Company hereunder, including any amounts received in cash or in kind, including the delivery of shares of Common Stock, on a conversion, repayment or redemption of this Note and any amounts on account of interest or deemed interest, shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, imposed under any applicable law (collectively referred to as "**Taxes**") unless the Company is required to withhold or deduct any amounts for, or on account of Taxes pursuant to any applicable law. If the Company shall be required to withhold or deduct any Taxes from or in respect of any sum payable hereunder to the Holder in cash or in kind, (i) the sum payable shall be increased by the amount necessary to ensure that after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section 24) the Holder actually receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the Company shall make such withholdings or deductions and (iii) the Company shall pay the full amount withheld or deducted to the relevant governmental authority within the time required by applicable laws.

(ii) In addition, the Company agrees to pay to the relevant governmental authority in accordance with applicable law any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration, enforcement or performance of, or otherwise with respect to, this Note if any such tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder ("**Other Taxes**").

(iii) The Company shall deliver to the Holder official receipts, if any, in respect of any Taxes and Other Taxes payable hereunder promptly after payment of such Taxes and Other Taxes, or such other evidence of payment reasonably acceptable to the Holder.

(iv) The Company shall indemnify the Holder within ten (10) calendar days after written demand therefor, for the full amount of any Taxes or Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 24), plus any related additions to tax, interest or penalties, that are paid by the Holder to, or imposed on the Holder by, the relevant governmental authorities, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authorities.

(v) The obligations of the Company under this Section 24 shall survive the termination of this Note and the payment of this Note and all other amounts payable hereunder.

(25) CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**Additional Interest**" means all amounts, if any, payable pursuant to Sections 6(b)(ii) and 9(b)(C) hereof.

(b) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(c) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(d) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(e) "**Bloomberg**" means Bloomberg Financial Markets.

(f) "**Board of Directors**" means the board of directors of the Company or any duly authorized committee of such board, or any equivalent body in a limited partnership, limited liability company or other entity serving substantially the same function as a board of directors of a corporation.

(g) "**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the Corporate Trust Office or banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

(h) "**Capital Stock**" means, for any entity, any and all shares, equity interests, equity participations or other equity equivalents of or equity interests in (however designated) the equity of that entity, but excluding debt securities convertible into such equity.

(i) "**Close of Business**" means 5:00 p.m., New York City time.

(j) "**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

(k) "**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

(l) "**Conversion Shares**" means shares of Common Stock issuable by the Company pursuant to the terms of any of the Notes, including, without limitation, any related Interest Shares and any Interest converted or redeemed.

(m) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(n) "**Daily Cash Amount**" means, with respect to any Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such Trading Day.

(o) "**Daily Conversion Value**" means, with respect to any Trading Day, one-fifth (1/5th) of the product of (A) the Conversion Rate on such Trading Day; and (B) the Daily VWAP per share of Common Stock on such Trading Day.

(p) "**Daily Maximum Cash Amount**" means, with respect to a conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) five (5).

(q) "**Daily Share Amount**" means, with respect to any Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

(r) "**Daily VWAP**" means, for any Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "JAKK<EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(s) "**Default Settlement Method**" means, while the First Lien Loan is outstanding, Physical Settlement and, otherwise, Combination Settlement with a Specified Dollar Amount of $1,000 per $1,000 principal amount of Notes; provided, however, that the Company may, from time to time, change the Default Settlement Method by sending written notice of the new Default Settlement Method to the Holder.

(t) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, The NASDAQ Global Market, The NASDAQ Capital Market or the NYSE American.

(u) "**Equity Conditions**" means each of the following conditions: (i) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, either (x) all Registration Statements filed and required to be filed pursuant to the Registration Rights Agreement shall be effective and available for the resale of all remaining Registrable Securities including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement and there shall not have been any Grace Periods (as defined in the Registration Rights Agreement) or (y) all Conversion Shares issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, shall be eligible for sale without restriction pursuant to Rule 144 and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, the Common Stock is listed, quoted or designated for quotation on the Principal Market, on any other Eligible Market or on any established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company); (iii) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions may be issued in full without violating Section 5(d)(ii) hereof and, in the case of such Interest Shares, Section 5(d)(i) hereof (and analogous provisions under the Other Notes) and the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, there shall not have occurred either (A) the public announcement of a pending, proposed or intended Fundamental Change which has not been abandoned, terminated or consummated, (B) an Event of Default or (C) an event that with the passage of time or giving of notice would constitute an Event of Default; (v) the Company shall have no knowledge of any fact that would cause (x) the Registration Statements required pursuant to the Registration Rights Agreement not to be effective and available for the resale of all remaining Registrable Securities, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement or (y) any shares of Common Stock issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, not to be eligible for sale without restriction pursuant to Rule 144 promulgated under the Securities Act (subject to solely to any restrictions imposed on the Holder due to the Holder's affiliate status with respect to the Company) and any applicable state securities laws; and (vi) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(v) "**Equity Conditions Failure**" means that on the applicable date of determination, the Equity Conditions have not each been satisfied (or waived in writing by the Holder).

(w) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(x) "**Exchange Agreement**" means that certain Exchange Agreement, dated as of November 7, 2017, by and between the Company and the initial Holder of this Note pursuant to which the Company originally issued this Note.

(y) "**Ex-Dividend Date**" means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date upon which the shares of Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(z) "**First Lien Loan**" means the term loan under the First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, as such shall be amended, amended and restated or otherwise modified from time to time, among JAKKS Pacific, Inc., Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the lenders party thereto from time to time and Cortland Capital Market Services LLC, as administrative agent.

(aa) "**Fundamental Change**" means the occurrence after the Amendment and Restatement Date of any of the following events:

(1) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) other than the Permitted Holders, the Company or its Subsidiaries or any of their respective employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(2) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries; (any such exchange, offer, consolidation, merger, sale, lease or other transfer transaction or series of transactions being referred to herein as an "**event**"); provided, however, that such event shall not be a Fundamental Change if (x) the holders of more than 50% of the Company's shares of Common Stock immediately prior to such event, own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event or (y) the Permitted Holders own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event;

(3) the Company consummates the liquidation or dissolution of the Company;

(4) a Liquidity Event (as defined in the New Preferred Certificate of Designations (as defined in the Transaction Agreement), as may be amended, amended and restated, supplemented or otherwise modified from time to time); or

(5) on or after November 9, 2020, the Common Stock (or other common stock into which this Note is then convertible) ceases to be listed on at least one U.S. national securities exchange, or ceases to be quoted and traded on an established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system;

provided, however, no transaction or event described in clause (2) above shall constitute a Fundamental Change if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or event that would otherwise have constituted a Fundamental Change consists of shares of Publicly Traded Securities, and as a result of the transaction or event, this Note becomes convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 3(c)(ii)(B)).

(bb) "**Group**" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(cc) "**Interest Notice Due Date**" means the tenth (10th) Trading Day prior to the applicable Interest Date.

(dd) "**Interest Share Price**" means, with respect to any Interest Date, the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the applicable Interest Date, by (y) ten (10).

(ee) "**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national securities exchange on the relevant date, then the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" of the Common Stock will be determined by a U.S. nationally recognized independent investment banking firm selected by the Company for this purpose. The Last Reported Sale Price will be determined without reference to after-hours or extended market trading.

(ff) "**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change under clause (1) or (2) of the definition thereof (in the case of any Fundamental Change described in clause (2) of the definition thereof, determined without regard to the proviso in such clause but after giving effect to the exceptions and exclusions to the definition of Fundamental Change that otherwise apply).

(gg) "**Market Disruption Event**" means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock of an aggregate one-half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

(hh) "**Maturity Notice Due Date**" means the tenth (10th) Trading Day prior to the Maturity Date.

(ii) "**Maturity Share Price**" means the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the Maturity Date, by (y) ten (10).

(jj) "**Observation Period**" means, with respect to any conversion, the five (5) consecutive Trading Days immediately preceding the date on which the Holder delivers to the Company the related Conversion Notice or the date on which the Company delivers the Mandatory Conversion Notice to the Holder.

(kk) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(ll) "**Other Oasis Notes**" means the following convertible senior notes issued by the Company to the Holder: (i) the $8.0 million principal amount convertible senior note, issued on July 26, 2018 and amended and restated on August 9, 2019, and (ii) the $8.0 million principal amount convertible senior note, issued on August 9, 2019.

(mm) "**Permitted Holders**" means, without duplication, (a) each of the Consenting Convertible Noteholders (as defined in the Transaction Agreement), (b) the Holder, (c) Affiliates of the Persons referred to in clauses (a) and (b), (d) any Person that has no material assets (other than Capital Stock in the Company, cash and cash equivalents) and of which no Person or "group" (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than Persons referred to in clauses (a) through (c), holds more than 50% of the total voting power of the Capital Stock of such Person, and (e) any "group" the members of which include one or more Permitted Holders (a "**Permitted Holder Group**"), so long as no Person or "group", other than Persons referred to in clauses (a), (b), (c) and (d), beneficially owns more than 50% of the total Capital Stock in the Company held by the Permitted Holder Group; each, a "Permitted Holder".

(nn) "**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

(oo) "**Principal Market**" means The NASDAQ Global Select Market.

(pp) "**Publicly Traded Securities**" means shares of common stock that are traded on a U.S. national securities exchange or that will be so traded when issued or exchanged in connection with a transaction or event described in clause (b) of the definition of Fundamental Change.

(qq) "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(rr) "**Registration Rights Agreement**" means the Amended and Restated Registration Rights Agreement, dated as of the Amendment and Restatement Date, by and among the Company and the Holders party thereto relating to, among other things, the registration of the resale of the shares of Common Stock issuable upon conversion of this Note and the Other Notes.

(ss) "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(tt) "**Related Fund**" means, with respect to any Person, a fund or account managed by such Person or an Affiliate of such Person.

(uu) "**Required Holders**" means the holders of Notes representing at least a majority of the aggregate Principal amount of the Notes then outstanding and shall include the initial Holder of this Note so long as the initial Holder of this Note or any of its Affiliates holds any Notes.

(vv) "**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day.

(ww) "**SEC**" means the United States Securities and Exchange Commission.

(xx) "**Securities Act**" means the Securities Act of 1933, as amended.

(yy) "**Series A Preferred Stock**" means the Series A Preferred Stock, par value $0.001 per share, of the Company.

(zz) "**Significant Subsidiary**" means, at any date of determination, any Subsidiary that would constitute a "significant subsidiary" within the meaning of Article 1 of Regulation S-X promulgated under the Securities Act as in effect on the Closing Date.

(aaa) "**Specified Dollar Amount**" means, with respect to a conversion to which Combination Settlement applies, the maximum cash amount deliverable upon such conversion per $1,000 of Conversion Amount.

(bbb) "**Subsidiary**" means, with respect to any specified Person: (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); or (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(ccc) "**Trading Day**" means a day during which (i) trading in the Common Stock generally occurs on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, in the principal other market on which the Common Stock is then traded, (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market, and (iii) there is no Market Disruption Event. If the Common Stock (or other security for which a Last Reported Sale Price must be determined) is not so listed or traded, "Trading Day" means a "Business Day."

(ddd) "**Transaction Agreement**" means that certain Transaction Agreement, dated as of August 7, 2019, by and among the Company, the Holders party thereto and the other signatories thereto.

(eee) "**Transaction Agreement Date**" means August 7, 2019.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Amendment and Restatement Date set out above.

JAKKS PACIFIC, INC.

By: /s/ *Stephen Berman*
Name: Stephen Berman
Title: CEO

EXHIBIT I

JAKKS PACIFIC, INC.
CONVERSION NOTICE

Reference is made to the Amended and Restated Convertible Senior Note (the "**Note**") issued to the undersigned by JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock par value $0.001 per share (the "**Common Stock**") of the Company, as of the date specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Note.

Date of Conversion: _____

Aggregate Conversion Amount to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued, assuming Physical Settlement applies to such conversion : _____

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: _____

Facsimile Number and Electronic Mail: _____

Authorization: _____

By: _____

Title: _____

Dated: _____

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

_____

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock.

JAKKS PACIFIC, INC.

By: _____
Name:
Title:

EXHIBIT II
JAKKS PACIFIC, INC.
FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: JAKKS Pacific, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from JAKKS Pacific, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and accrued and unpaid interest at the cash interest rate thereon to, but excluding, such Fundamental Change Repurchase Date.

The certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)
Social Security or Other Taxpayer Identification Number
principal amount to be repaid (if less than all): $,000
NOTICE: The signature on the Fundamental Change Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 10.5

ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 5(c)(iv) AND 12(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iv) OF THIS NOTE.

JAKKS PACIFIC, INC.
AMENDED AND RESTATED CONVERTIBLE SENIOR NOTE

Issuance Date: July 26, 2018
Amendment and Restatement Date: August 9, 2019

Original Principal Amount:
U.S. $8,000,000

Certificate No.: 2

FOR VALUE RECEIVED, JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to OASIS INVESTMENTS II MASTER FUND LTD. or registered assigns (the "**Holder**") in cash and/or in shares of Common Stock (as defined below) the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise and as it may be increased by PIK Interest (as defined below) pursuant to Section 2(a)(ii), the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon an Interest Date (as defined below), the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Amended and Restated Convertible Senior Note, including any Amended and Restated Convertible Senior Note issued in exchange, transfer or replacement hereof, is referred to as this "**Note**" and was originally issued pursuant to the Exchange Agreement on the Issuance Date and is being amended and restated on the Amendment and Restatement Date pursuant to the Transaction Agreement. The Other Oasis Notes, and any notes issued in exchange, transfer or replacement thereof, are collectively referred to herein as the "**Other Notes**" and, together with this Note, the "**Notes**." Certain capitalized terms used herein are defined in Section 25.

This Note amends and restates and replaces in its entirety that certain Convertible Senior Note dated as of July 26, 2018 issued by the Company to the Holder in the original principal amount of Eight Million Dollars ($8,000,000) (the "**Original Note**"). The indebtedness evidenced by the Original Note which remains unpaid and outstanding as of the Amendment and Restatement Date shall be and remain (without duplication) outstanding and payable as an obligation under this Note, and nothing contained in this Note is intended to be, nor shall it be deemed to be, an extinguishment, settlement or novation of such indebtedness.

(1) PAYMENTS OF PRINCIPAL; PREPAYMENT.

(a) On the Maturity Date, the Company shall pay to the Holder an amount representing all outstanding Principal, accrued and unpaid Interest on such Principal and Interest (the "**Maturity Amount**"). The "**Maturity Date**" shall be 91 days after the repayment in full of the First Lien Loan; provided, however, that in no event shall the Maturity Date be later than July 3, 2023. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, if any. The Maturity Amount shall be payable to the record holder of this Note on the Maturity Date in cash; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay the Maturity Amount in shares of Common Stock ("**Maturity Shares**") so long as there has been no Equity Conditions Failure during the period from the Maturity Notice Date (as defined below) preceding the Maturity Date through the Maturity Date or in a combination of cash and Maturity Shares. The Company shall deliver a written notice (the "**Maturity Notice**") to the Holder and each holder of Other Notes on or prior to the Maturity Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Maturity Notice Date**") which notice (i) either (a) confirms that the Maturity Amount shall be paid entirely in cash, or (b) elects to pay the Maturity Amount as Maturity Shares or a combination of cash and Maturity Shares and specifies the portion of the Maturity Amount, if any, that shall be paid in cash and the portion, if any, that shall be paid in Maturity Shares which amounts, when added together, must equal the Maturity Amount due on the Maturity Date, and (ii) if the Maturity Amount is to be paid, in whole or in part, in Maturity Shares, certifies that there has been no Equity Conditions Failure as of the Maturity Notice Date. If there is an Equity Conditions Failure as of the Maturity Notice Date, then unless the Company has elected to pay the Maturity Amount in cash, the Maturity Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If the Company confirmed (or is deemed to have confirmed by operation of this Section 1) the payment of the Maturity Amount in Maturity Shares, in whole or in part, and if there was no Equity Conditions Failure as of the Maturity Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure in connection with the Maturity Amount payment in Maturity Shares by operation of this Section 1) but an Equity Conditions Failure occurred between the Maturity Notice Date and any time prior to the Maturity Date (the "**Maturity Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during the Maturity Interim Period, then at the option of the Holder, the Holder may require the Company to pay the Maturity Amount in cash. If any portion of Maturity Amount shall be paid in Maturity Shares, then on the Maturity Date, the Company shall issue to the Holder, in accordance with Section 1(b), such number of shares of Common Stock equal to (a) the Maturity Amount payable in Maturity Shares divided by (b) the Maturity Share Price with any fractional share amounts rounded up to the nearest whole number of shares. All Maturity Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver a Maturity Election Notice in accordance with this Section 1(a), then the Company shall be deemed to have delivered an irrevocable Maturity Election Notice confirming the payment of cash. Except as expressly provided in this Section 1, the Company shall pay the Maturity Amount in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 1 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Maturity Shares and/or cash hereunder.

(b) When any Maturity Shares are to be issued, the Company shall (a) provided that the Company's transfer agent (the "**Transfer Agent**"), if any, is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Maturity Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the Maturity Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the Maturity Date, a certificate, registered in the name of the Holder or its designee, for the number of Maturity Shares to which the Holder shall be entitled. When any cash is to be paid on the Maturity Date, the Company shall pay such cash to the Holder by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock pursuant to this Section 1; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(2) INTEREST.

(a) Interest on this Note shall accrue as described below at the applicable Interest Rate on any outstanding Principal and shall be computed on the basis of a 360-day year comprised of twelve 30-day months and shall be payable in arrears on each May 1 and November 1 (each, an "**Interest Date**"). Interest on this Note shall be comprised of Shares/Cash Interest (as defined below) and PIK Interest.

(i) Shares/Cash Interest. Interest as described in this Section 2(a)(i) ("**Shares/Cash Interest**") shall commence accruing on the Amendment and Restatement Date at a rate of 5.00% per annum (the "**Shares Interest Rate**") and shall be payable on each Interest Date to the record holder of this Note on the applicable Interest Date in shares of Common Stock ("**Interest Shares**") so long as there has been no Equity Conditions Failure or a Fundamental Change under paragraph (1) or (2) of the definition of Fundamental Change provided in Section 25 (a "**Change of Control**") during the period from the applicable Interest Notice Date (as defined below) through the applicable Interest Date; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay Shares/Cash Interest on any Interest Date in cash ("**Cash Interest**") at a rate of 3.25% per annum (together with the Shares Interest Rate, the "**Shares/Cash Interest Rate**") or in a combination of Cash Interest and Interest Shares. The Company shall deliver a written notice (each, an "**Interest Election Notice**") to the Holder and each holder of Other Notes on or prior to the applicable Interest Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Interest Notice Date**") which notice (i) either (a) confirms that Shares/Cash Interest to be paid on such Interest Date shall be paid entirely in Interest Shares, or (b) elects to pay Shares/Cash Interest on such Interest Date as Cash Interest or a combination of Cash Interest and Interest Shares and specifies the amount of Shares/Cash Interest that shall be paid as Cash Interest and the amount of Shares/Cash Interest, if any, that shall be paid in Interest Shares which amounts, when added together, must equal the applicable Shares/Cash Interest due on such Interest Date, and (ii) if Shares/Cash Interest is to be paid, in whole or in part, in Interest Shares, certifies that there has been no Equity Conditions Failure or Change of Control as of such Interest Notice Date. Any Interest Election Notice shall apply to the immediately following Interest Date and will, absent a contrary statement therein, apply to all future Interest Dates, unless the Company delivers with respect to any subsequent Interest Date an Election Notice on or prior to the applicable Interest Notice Date. If there is an Equity Conditions Failure or Change of Control as of the Interest Notice Date, then unless the Company has elected to pay such Shares/Cash Interest as Cash Interest, the applicable Interest Election Notice shall indicate that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If the Company confirmed (or is deemed to have confirmed by operation of this Section 2) the payment of the applicable Shares/Cash Interest in Interest Shares, in whole or in part, and if there was no Equity Conditions Failure or Change of Control as of the applicable Interest Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure or Change of Control in connection with such Shares/Cash Interest payment in Interest Shares by operation of this Section 2) but an Equity Conditions Failure or Change of Control occurred between the applicable Interest Notice Date and any time prior to the applicable Interest Date (an "**Interest Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If there is an Equity Conditions Failure or Change of Control (which such Equity Conditions Failure or Change of Control is not waived in writing by the Holder) during such Shares/Cash Interest Interim Period, then at the option of the Holder, the Holder may require the Company to pay the amount of Shares/Cash Interest payable on the applicable Interest Date as Cash Interest. If any portion of Shares/Cash Interest for a particular Interest Date shall be paid in Interest Shares, then on the Interest Date, the Company shall issue to the Holder, in accordance with Section 2(b), such number of shares of Common Stock equal to (a) the amount of Shares/Cash Interest payable on the applicable Interest Date in Interest Shares divided by (b) the Interest Share Price with respect to such Interest Date with any fractional share amounts rounded up to the nearest whole number of shares. All Interest Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver an Interest Election Notice in accordance with this Section 2(a), then the Company shall be deemed to have delivered an irrevocable Interest Election Notice confirming the payment of Shares/Cash Interest in Interest Shares and shall be deemed to have certified that in connection with the delivery of Interest Shares on the applicable Interest Date no Equity Conditions Failure or Change of Control has occurred. Except as expressly provided in this Section 2, the Company shall pay the applicable Shares/Cash Interest in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 2 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Interest Shares and/or Cash Interest hereunder.

(ii) PIK Interest. In addition to the Cash/Interest accruing pursuant to Section 2(a)(i), Interest as described in this Section 2(a)(ii) ("**PIK Interest**") shall commence accruing on the Amendment and Restatement Date at a rate of 2.75% per annum (the "**PIK Interest Rate**" and, together with the Shares/Cash Interest Rate, the "**Interest Rate**") and shall be payable in kind on each Interest Date following the Amendment and Restatement Date to the record holder of this Note on the applicable Interest Date by having the outstanding principal amount of this Note automatically increase on such Interest Date by the amount of such PIK Interest.

(b) When any Interest Shares are to be issued on an Interest Date, the Company shall (a) provided that the Transfer Agent, if any, is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of Interest Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the applicable Interest Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Interest Date, a certificate, registered in the name of the Holder or its designee, for the number of Interest Shares to which the Holder shall be entitled. When any Cash Interest is to be paid on an Interest Date, the Company shall pay such Cash Interest to the Holder, in cash by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock as Interest pursuant to this Section 2; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(3) PURCHASE.

(a) Repurchase at Option of Holder upon a Fundamental Change.

If there shall occur a Fundamental Change at any time prior to the Maturity Date, then the Holder shall have the right, at the Holder's option, to require the Company to repurchase for cash all or any portion of this Note that is an integral multiple of $1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days and not more than 35 Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price, in cash, equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon at the cash interest rate to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). Repurchases under this Section 3(a) shall be made, at the option of the Holder, upon:

(A) delivery to the Company by the Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form attached as Exhibit II hereto on or prior to the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date; and

(B) delivery of this Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements, if any), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3(a) only if the Note so delivered to the Company shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(I) the certificate number of this Note to be delivered for repurchase;

(II) the portion of the principal amount of this Note to be repurchased, which must be $1,000 or an integral multiple thereof; and

(III) that this Note is to be repurchased by the Company pursuant to the applicable provisions of this Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3(a) shall be consummated by the payment of the Fundamental Change Repurchase Price pursuant to Section 3(c).

Notwithstanding anything herein to the contrary, if the Holder delivers to the Company the Fundamental Change Repurchase Notice contemplated by this Section 3(a), the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3(b).

On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide notice (the "**Fundamental Change Company Notice**") to the Holder and all holders of the Other Notes of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:

(A) the events causing the Fundamental Change;

(B) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case, the effective date of the Make-Whole Fundamental Change;

(C) the last date on which the Holder may exercise the repurchase right pursuant to this Section 3;

(D) the Fundamental Change Repurchase Price;

(E) the Fundamental Change Repurchase Date;

(F) the applicable Conversion Rate, and, if applicable, any adjustments to the applicable Conversion Rate;

(G) that the portion of this Note with respect to which a Fundamental Change Repurchase Notice has been delivered by the Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Note;

(H) that the Holder must exercise the repurchase right on or prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date (the "**Fundamental Change Expiration Time**");

(I) that the Holder shall have the right to withdraw any portion of this Note surrendered prior to the Fundamental Change Expiration Time; and

(J) the procedures that the Holder must follow to require the Company to repurchase all or any portion of this Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of this Note pursuant to this Section 3(a).

Notwithstanding the foregoing, the Company shall not be required to repurchase this Note in accordance with this Section 3 if a third party or any Subsidiary of the Company makes an offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3 and purchases this Note and all Other Notes validly tendered and not withdrawn under such purchase offer.

(b) Withdrawal of Fundamental Change Repurchase Notice.

(i) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Company in accordance with this Section 3(b) at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(A) the principal amount of this Note with respect to which such notice of withdrawal is being submitted,

(B) the certificate number of this Note, and

(C) the principal amount, if any, of this Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000.

(c) Payment of Fundamental Change Repurchase Price.

(i) The Company shall make payment for this Note surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) on the later of (x) the Fundamental Change Repurchase Date with respect to this Note (provided the Holder has satisfied the conditions in Section 3(a)) and (y) the time of the delivery of this Note to the Company by the Holder in the manner required by Section 3(a) as provided in Section 18(b).

(ii) If the Company makes the required payment of the Fundamental Change Repurchase Price by 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, then (x) such portion of this Note will cease to be outstanding, (y) interest will cease to accrue on such portion of this Note, and (z) all other rights of the Holder will terminate with respect to such portion of this Note with respect to which payment has been received by the Holder (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, upon delivery of this Note), whether or not this Note has been delivered to the Company.

(iii) Upon any surrender of this Note that is to be repurchased in part pursuant to Section 3(a), the Company shall execute and deliver to the Holder a new Note equal in principal amount to the unrepurchased portion of this Note surrendered in accordance with Section 12.

(4) REDEMPTION. If, at any time, a Person acquires voting Common Stock and, as a result, holds at least 49% of the issued and outstanding voting Common Stock (the "**Company Optional Redemption Trigger Event**"), the Company shall have the right to redeem all, but not less than all, of the Notes as designated in the Company Optional Redemption Notice on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The Notes subject to redemption pursuant to this Section 4 shall be redeemed by the Company on the Company Optional Redemption Date in cash by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company at a price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon (the "**Company Optional Redemption Price**"). The Company may exercise its right to require redemption under this Section 4 by delivering within not more than three (3) Trading Days following a Company Optional Redemption Triggering Event a written notice thereof by facsimile or electronic mail and overnight courier to the Holder and all, but not less than all, of the holders of the Other Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of the Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (i) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**"), which date shall not be less than five (5) Trading Days nor more than ten (10) Trading Days following the Company Optional Redemption Notice Date and (ii) state the aggregate principal amount of this Note and the Other Notes subject to Company Optional Redemption from the Holder and all of the holders of the Other Notes pursuant to this Section 4 (and analogous provisions under the Other Notes) on the Company Optional Redemption Date. To the extent redemptions required by this Section 4 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of this Note under this Section 4, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. If the Company elects to cause a Company Optional Redemption of this Note pursuant to this Section 4, then it must simultaneously take the same action in the same proportion with respect to any Other Notes.

(5) CONVERSION. At any time or times on or after the Amendment and Restatement Date, this Note shall be convertible into shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 5.

(a) Conversion Right. Subject to the provisions of Section 5(d) and Section 5(e), at any time or times after the Amendment and Restatement Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into Conversion Consideration (as defined in Section 5(c)(ii)(A)) in accordance with Section 5(c), at the Conversion Rate (as defined below); provided, that the Holder shall not be entitled to elect any conversion unless the Company would be permitted to settle the related Conversion Amount in the form of a Physical Settlement in accordance with Section 5(d)(i). The Company shall pay any and all transfer, stamp and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(b) Conversion Rate. The conversion rate with respect to a conversion of any Conversion Amount pursuant to this Section 5 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the portion of the Principal to be converted.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $1.00 per share, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Settlement Method. Upon any conversion of this Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this Section 5(c)(i), either (x) subject to Section 5(d), shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Physical Settlement**"); (y) solely cash (a "**Cash Settlement**"); or (z) subject to Section 5(d), a combination of cash and shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Combination Settlement**") (each, a "**Settlement Method**").

The Company will have the right to elect the Settlement Method applicable to any conversion of this Note; provided, however, that:

(A) subject to clause (B) below, if the Company elects a Settlement Method, then the Company will provide written notice of such Settlement Method to the Holder no later than the Close of Business on the Business Day immediately after such Conversion Date (as defined in Section 5(c)(iii));

(B) if the Company does not timely elect a Settlement Method with respect to a conversion of this Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a default or an Event of Default); and

(C) if the Company timely elects Combination Settlement with respect to a conversion of this Note but does not timely notify the Holder of this Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be $1,000 per $1,000 principal amount of this Note (and, for the avoidance of doubt, the failure to timely make such notification will not constitute a default or Event of Default).

(ii) Conversion Consideration.

(A) Subject to clause (B) below, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of Conversion Amount to be converted will be as follows:

(x) if Physical Settlement applies to such conversion, subject to clause (B) below and subject to Section 5(d), a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(y) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each Trading Day in the Observation Period for such conversion; or

(z) if Combination Settlement applies to such conversion, consideration consisting, subject to clause (B) below and subject to Section 5(d), of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each Trading Day in such Observation Period.

(B) If Physical Settlement or Combination Settlement applies to any conversion and the number of shares of Common Stock deliverable pursuant to clause (A) above upon such conversion is not a whole number, then such number will be rounded up to the nearest whole number.

(C) Blocker Notice. Notwithstanding the foregoing, if (i) the Company has elected a Physical Settlement or a Combination Settlement pursuant to the provisions set forth in this Section 5(c) and (ii) the Company is permitted to elect such Settlement Method if not for Section 5(d)(i), the Company may request that the Holder provide written notice to the Company confirming that such settlement will not conflict with Section 5(d)(i), and the Holder shall promptly respond to such request. If the Holder provides such written notice to the Company, the Company shall be permitted to rely on such notice.

(iii) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company and (B) if required by Section 5(c)(iv) but without delaying the Company's requirement to deliver Conversion Consideration on the Delivery Date (as defined below), surrender this Note to a common carrier for delivery to the Company as soon as practicable on or following such date (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction). On or before the first (1st) Business Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Transfer Agent. In the case of a Physical Settlement or a Combination Settlement, on or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice (the "**Delivery Date**"), the Company shall (x) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal At Custodian system or (y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled. In the case of a Cash Settlement or a Combination Settlement, the Company shall deliver to the Holder any cash included in the Conversion Consideration on the Delivery Date as provided in Section 18(b). If this Note is physically surrendered for conversion as required by Section 5(c)(iv) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive any shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date, irrespective of the date such Conversion Shares are credited to the Holder's account with DTC or the date of delivery of the certificates evidencing such Conversion Shares, as the case may be.

(iv) Registration; Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the Principal amount of the Notes (and stated interest thereon) held by such holders (the "**Registered Notes**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes, including, without limitation, the right to receive payments of Principal and Interest, if any, hereunder, notwithstanding notice to the contrary. A Registered Note may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a request to assign or sell all or part of any Registered Note by a Holder, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate Principal amount as the Principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 11 to the extent such transfer is not prohibited by Section 11. Notwithstanding anything to the contrary in this Section 5(c)(iv) or the limitations of Section 11, a Holder may assign any Note or any portion thereof to an Affiliate of such Holder or a Related Fund of such Holder without delivering a request to assign or sell such Note to the Company and the recordation of such assignment or sale in the Register (a "**Related Party Assignment**"); provided, that (x) the Company may continue to deal solely with such assigning or selling Holder unless and until such Holder has delivered a request to assign or sell such Note or portion thereof to the Company for recordation in the Register; (y) the failure of such assigning or selling Holder to deliver a request to assign or sell such Note or portion thereof to the Company shall not affect the legality, validity, or binding effect of such assignment or sale and (z) such assigning or selling Holder shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register (the "**Related Party Register**") comparable to the Register on behalf of the Company, and any such assignment or sale shall be effective upon recordation of such assignment or sale in the Related Party Register. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion.

(v) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice with respect to this Note and one or more holder of Other Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of this Note and the Other Notes submitted for conversion, the Company, subject to Section 5(d), shall convert from the Holder and each holder of Other Notes electing to have this Note or the Other Notes converted on such date a pro rata amount of such holder's portion of this Note and its Other Notes submitted for conversion based on the Principal amount of this Note and the Other Notes submitted for conversion on such date by such holder relative to the aggregate Principal amount of this Note and all Other Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable or the amount of cash payable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock and pay to the Holder the amount of cash not in dispute and resolve such dispute in accordance with Section 17.

(vi) Mandatory Conversion. If at any time, (i) the arithmetic average of the Last Reported Sale Price of the Common Stock for any twenty (20) consecutive Trading Days (the "**Mandatory Conversion Measuring Period**") equals or exceeds 150% of the Conversion Price on the Amendment and Restatement Date (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Amendment and Restatement Date) and (ii) no Equity Conditions Failure has occurred, the Company shall have the right to require the Holder and all, but not less than all, holders of Other Notes to convert all or any portion of the Conversion Amount then remaining under this Note and the Other Notes, as designated in the Mandatory Conversion Notice on the Mandatory Conversion Date (each as defined below) in accordance with Section 5(c) hereof at the Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "**Mandatory Conversion**") pursuant to the Settlement Method elected in accordance with Section 5(c)(i). The Company may exercise its right to require conversion under this Section 5(c)(vi) by delivering within not more than three (3) Trading Days following the end of such Mandatory Conversion Measuring Period a written notice thereof by facsimile and overnight courier to all, but not less than all, of the holders of Notes and the Transfer Agent (the "**Mandatory Conversion Notice**" and the date the Holder and all the holders of the Other Notes received such notice is referred to as the "**Mandatory Conversion Notice Date**"). The Mandatory Conversion Notice shall be irrevocable. The Mandatory Conversion Notice shall (i) state (a) the Trading Day on which the Mandatory Conversion shall occur, which Trading Day shall not be less than ten (10) Trading Days nor more than twelve (12) Trading Days following the Mandatory Conversion Notice Date (the "**Mandatory Conversion Date**"), (b) the aggregate Conversion Amount of the Notes which the Company has elected to be subject to Mandatory Conversion from the Holder and all of the holders of the Other Notes pursuant to this Section 5(c)(vi) (and analogous provisions under the Other Notes) and (c) the Settlement Method applicable to such Mandatory Conversion and number of shares of Common Stock to be issued and/or the amount of cash to be delivered to the Holder on the Mandatory Conversion Date and (ii) certify that there has been no Equity Conditions Failure as of the Mandatory Conversion Notice Date. If the Company confirmed that there was no such Equity Conditions Failure as of the Mandatory Conversion Notice Date but an Equity Conditions Failure occurs between the Mandatory Conversion Notice Date and any time through the Mandatory Conversion Date (the "**Mandatory Conversion Interim Period**"), the Company shall provide the Holder and each holder of Other Notes a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Mandatory Conversion Interim Period, then the Mandatory Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Conversion Amount subject to the Mandatory Conversion and the Holder shall be entitled to all the rights of a holder of this Note with respect to such Conversion Amount. Notwithstanding anything to the contrary in this Section 5(c)(vi), until the Mandatory Conversion has occurred, the Conversion Amount subject to the Mandatory Conversion may be converted, in whole or in part, by the Holder pursuant to Sections 5(c)(i), (ii) and (iii). All Conversion Amounts converted by the Holder after the Mandatory Conversion Notice Date shall reduce the Conversion Amount of this Note required to be converted on the Mandatory Conversion Date. If the Company elects to cause a Mandatory Conversion pursuant to this Section 5(c)(vi), then it must simultaneously take the same action in the same proportion with respect to the Other Notes.

(d) Beneficial Ownership Limitation.

(i) Beneficial Ownership. The Company shall not deliver any shares of Common Stock pursuant to this Note, to effect the conversion of any portion of this Note or otherwise, and the Holder shall not have the right to convert any portion of this Note, to the extent that after giving effect to such delivery, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such delivery other than in connection with (x) the delivery of Maturity Shares pursuant to Section 1 or (y) a Mandatory Conversion pursuant to Section 5(c)(vi). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable pursuant to this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d)(i). For purposes of this Section 5(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 5(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty- first (61st)day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 4.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61St) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. In connection with any conversion, for purposes of this Section 5(d)(i), the Company shall be permitted to rely on a notice delivered by the Holder pursuant to Section 5(c)(ii)(C) in connection with such conversion that represents that the settlement of such conversion complies with this Section 5(d)(i).

(ii) Principal Market Regulation. The Company shall not be obligated to issue any shares of Common Stock pursuant to the terms of this Note or any Other Notes, and the Holder shall not have the right to receive pursuant to the terms of this Note or any Other Notes any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the terms of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market , taking into account the Other Oasis Notes and any integrated transactions for purposes of the rules or regulations of the Principal Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount. Until such approval is obtained, no holder that acquires Notes pursuant to the Transaction Agreement (the "**Initial Holders**") shall be issued in the aggregate, pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the Principal amount of Notes issued to such Initial Holder pursuant to the Transaction Agreement on the Closing Date (as defined in the Transaction Agreement) and the denominator of which is the aggregate principal amount of all Notes issued to the Initial Holders pursuant to the Transaction Agreement on the Closing Date (with respect to each Initial Holder, the "**Exchange Cap Allocation**"). In the event that any Initial Holder shall sell or otherwise transfer any of such Initial Holder's Notes, the transferee shall be allocated a pro rata portion of such Initial Holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder of Notes shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the aggregate principal amount of the Notes then held by each such holder.

(e) [Intentionally omitted.]

(f) Increased Conversion Rate Applicable to Conversions in Connection with Make-Whole Fundamental Changes.

(i) If the Holder elects to convert this Note at any time from, and including, the Effective Date (as defined below) of a Make-Whole Fundamental Change until, and including, the close of business on the second Scheduled Trading Day immediately preceding the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change, or the 35th Business Day immediately following the Effective Date of such Make-Whole Fundamental Change (in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"), the applicable Conversion Rate shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described in this Section 5(f). The Company will notify the Holder and the holders of the Other Notes of the anticipated Effective Date of the Make-Whole Fundamental Change and issue a press release as soon as practicable after the Company first determines the anticipated Effective Date of such Make-Whole Fundamental Change, and use commercially reasonable efforts to make such determination in time to deliver written notice 25 Scheduled Trading Days in advance of the anticipated Effective Date; provided, that, the Company will not be required to give written notice or issue a press release more than 25 Scheduled Trading Days in advance of the anticipated Effective Date.

(ii) The number of Additional Shares by which the Conversion Rate will be increased for conversions that occur during the Make-Whole Fundamental Change Period will be determined by reference to the table set forth below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed paid) per share of the Company's Common Stock in the Make-Whole Fundamental Change. If holders of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on and including the Trading Day preceding the Effective Date of the Make-Whole Fundamental Change.

(iii) The following table sets forth the number of Additional Shares, if any, by which the Conversion Rate will be increased for each Stock Price and Effective Date set forth in the table below:

Make-Whole Conversion Rate Adjustment
(per $1,000 Conversion Amount)

	Effective Date					
Stock Price	**August 7, 2019**	**May 1, 2020**	**May 1, 2021**	**May 1, 2022**	**May 1, 2023**	**July 3, 2023**
$ 0.85	180.64	180.64	180.64	180.64	180.64	180.64
$ 0.90	171.78	173.11	170.89	159.00	119.44	111.11
$ 1.00	127.90	127.30	121.80	105.30	50.70	0
$ 1.12	90.27	88.57	81.52	64.11	15.00	0
$ 1.25	62.08	59.92	52.88	37.28	3.92	0
$ 1.38	42.39	40.29	33.99	21.30	1.30	0
$ 1.50	0	0	0	0	0	0

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(x) If the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(y) If the Stock Price is greater than $1.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(z) If the Stock Price is less than $0.85 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(iv) The Stock Prices set forth in the first column of the table in Section 5(f)(iii) shall be adjusted as of any date on which the Conversion Rate is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 5(g).

(v) As soon as practicable after the Effective Date of any Make-Whole Fundamental Change but in no event later than five Trading Days after such Effective Date, the Company shall mail to the Holder and all holders of the Other Notes written notice of, and shall issue a press release announcing, the Effective Date of such Make-Whole Fundamental Change and make such press release available on the Company's web site. If applicable, such notice and press release shall also specify the amount, if any, by which the Conversion Rate shall be increased in accordance with the provisions of this Section 5(f) and the period in which this Note may be converted at the increased Conversion Rate.

(vi) Nothing in this Section 5(f) shall prevent an adjustment to the Conversion Rate pursuant to Section 5(g).

(vii) If the Holder elects to convert this Note prior to the Effective Date of the Make-Whole Fundamental Change, the Holder shall not be entitled to any adjustment to the Conversion Rate or any Additional Shares under this Section 5(f) in connection with such conversion.

(g) Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company will not make any adjustment to the Conversion Rate if the Holder participates, as a result of holding this Note, in any of the transactions described in this Section 5(g) at the same time as holders of the Common Stock participate, without having to convert this Note as if such Holder held, for each $1,000 Principal amount of this Note, a number of shares of Common Stock equal to the Conversion Rate in effect at the time any such adjustment would otherwise be required.

(i) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all of the shares of Common Stock, or if the Company effects a share split or share combination of the Common Stock, the applicable Conversion Rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be; and

OS = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 5(g)(i) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

For purposes of this Section 5(g)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the applicable ten-consecutive-Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property to all or substantially all holders of its Common Stock other than (x) dividends or distributions (including share splits) or rights, options or warrants covered by Section 5(g)(i) or Section 5(g)(ii), (y) dividends or distributions paid exclusively in cash, and (z) Spin-Offs to which the provisions set forth below in this Section 5(g)(iii) shall apply, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution.

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution; provided that if "FMV" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provisions shall be made so that each Holder shall have the right to receive on conversion in respect of each $1,000 principal amount of Principal outstanding under this Note, in addition to the shares of Common Stock to which such Holder shall be entitled, the amount and kind of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other of the Company's assets or property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the record date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines "FMV" for purposes of this Section 5(g)(iii) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 5(g)(iii) where there has been a dividend or other distribution on all or substantially all shares of the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are or will be when issued listed on a securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"), and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(g)(iii) shall be made immediately after the opening of business on the day after the last day of the Valuation Period, but shall become effective as of the opening of business on the Ex-Dividend Date for the Spin-Off. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Ex- Dividend Date of any Spin-Off, references in the portion of this Section 5(g)(iii) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the Conversion Date for such conversion.

For the purposes of this Section 5(g)(iii) (and subject in all respect to Section 5(1)), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 5(g) (and no adjustment to the Conversion Rate under this Section 5(g) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 5(g)(iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Closing Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 5(g)(iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 5(g)(iii), Section 5(g)(i), and Section 5(g)(ii), any dividend or distribution to which this Section 5(g)(iii) is applicable that also includes shares of Common Stock to which Section 5(g)(i) applies, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 5(g)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 5(g) (iii) applies (and any Conversion Rate adjustment required by this Section 5(g)(iii) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 5(g)(i) and Section 5(g)(ii) with respect to such dividend or distribution shall then be made), except that if determined by the Company (A) "the Ex-Dividend Date for such distribution" and "the Ex-Dividend Date relating to such distribution of such rights, options or warrants" within the meaning of Section 5(g)(i) and Section 5(g)(ii), as the case may be, shall be deemed to be the Ex-Dividend Date for such dividend or distribution for purposes of Section 5(g)(iii), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be" within the meaning of Section 5(g)(i) or "outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution" within the meaning of Section 5(g)(ii).

(iv) If the Company makes or pays cash dividends or distributions to all or substantially all holders of its outstanding Common Stock in any fiscal quarter, the applicable Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; provided that if "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each $1,000 principal amount of Principal outstanding under this Note, the amount of cash such holder would have received had the Holder owned a number of shares equal to the Conversion Rate on the record date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 5(g)(iv), in the event of any reclassification of the Common Stock, as a result of which this Note becomes convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 5(g)(iv), references in this Section to one share of Common Stock or Last Reported Sale Prices of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which this Note is then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(v) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and if the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where

CR = the applicable Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "**Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer); OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender offer or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

Such adjustment under this Section 5(g)(v) shall become effective at the opening of business on the Trading Day next succeeding the Expiration Date. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5(g)(v) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 5(g)(v).

(vi) For purposes of this Section 5(g), the term "**record date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(vii) In addition to those required by clauses (i), (ii), (iii), (iv) and (v) of this Section 5(g), and to the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Stock Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(viii) The Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(ix) All calculations and other determinations under this Section 5 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share. The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (x) upon any conversion and (y) on each of the 22 Scheduled Trading Days immediately preceding the Maturity Date.

(x) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Holder and all holders of the Other Notes an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment and issue a press release containing the relevant information (and make such press release available on the Company's web site). Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(xi) For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(xii) Notwithstanding this Section 5(g) or any other provision of this Note, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, the close of business on the third Trading Day immediately following the relevant Conversion Date, the Board of Directors may make adjustments to the Conversion Rate and the number of shares of Common Stock issuable upon conversion of this Note as are necessary or appropriate to effect the intent of this Section 5(g) and the other provisions of this Section 5 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 5(g)(xii) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(xiii) Except as set forth in this Section 5, the Company shall not adjust the Conversion Rate. The applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of the Common Stock under any plan;

(B) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of the Company's Subsidiaries;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (B) of this subsection and outstanding as of the Closing Date;

(D) for a change in the par value of the Common Stock;

(E) for accrued and unpaid interest; or

(F) except as stated herein, for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities.

(h) Effect of Reclassification, Consolidation, Merger or Sale.

(i) Upon the occurrence of

(A) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 5(g)(i)),

(B) any consolidation, merger, combination or binding share exchange involving the Company, or

(C) any sale, lease or conveyance of all or substantially all of the property and assets of the Company to any other Person,

(any such event a "**Merger Event**") in each case as a result of which the Common Stock would be converted into cash, securities or other property or assets with respect to or in exchange for such Common Stock, then at the effective time of such transaction, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that at and after the effective time of such transaction, the right to convert this Note will be changed into a right to convert it as set forth in this Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversation Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction (the "**Reference Property**"), subject to the provisions of Section 5(h)(ii). The Company shall not become a party to any such transaction unless its terms are consistent with this Section 5(h). Such amendment shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5 in the judgment of the Board of Directors or the board of directors of the successor Person and acceptable to the Holder. If, in the case of any Merger Event the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such amendment shall also be executed by such other Person with respect to the delivery of Reference Property upon conversion. For purposes of the foregoing, if any Merger Event causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which this Note will be convertible as set forth in this Note shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock (or a plurality thereof if holders of Common Stock are entitled to make multiple elections pursuant to the applicable Merger Event) that affirmatively make such an election (the "**Weighted Average Consideration**").

(ii) With respect to each $1,000 Principal amount of this Note surrendered for conversion after the effective date of any Merger Event, the Company shall pay the Conversion Consideration in units of Reference Property (each consisting of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event shall have received (or shall be deemed to have received) in such Merger Event) in accordance with Section 5(c) subject to the foregoing. The Company shall deliver to the converting Holder a number of units of Reference Property equal to (1) the aggregate Conversion Amount, divided by $1,000, multiplied by (2) the then-applicable Conversion Rate.

(iii) In the event that this Note becomes convertible into Reference Property pursuant to this Section 5(h), the Company shall notify Holder in writing. If applicable, the Company shall notify the Holder in writing of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(iv) Notwithstanding any of the provisions of Section 5(g), if this Section 5(h) applies to any event or occurrence, Section 5(g) shall not apply.

(v) The above provisions of this Section shall similarly apply to successive Merger Events.

(i) Taxes on Shares Issued.

If a Holder submits this Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the Holder shall pay any such tax that is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Company may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Company receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude, subject to Section 24, any tax withholding required by law or regulations.

(j) Reservation of Shares; Shares to be Fully Paid; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion.

The Company covenants that all shares of Common Stock that may be issued upon conversion of this Note shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of this Note on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

(k) Notice to Holder Prior to Certain Actions.

In case:

(i) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 5(g); or

(ii) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or

(iii) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company; the Company shall deliver, by electronic transmission, to the Holder, as promptly as practicable but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

(l) Stockholder Rights Plans.

To the extent that the Company has a stockholder rights plan or other "poison pill" in effect upon conversion of this Note, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If, however, prior to the time of conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the Holder would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or other assets or property having a fair market value of the rights as provided in Section 5(g)(iii), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(m) Conversion Rate Resets. On each of February 9 and August 9 (each, a "**Reset Date**"), with the first Reset Date being February 9, 2020, the Conversion Rate shall be reset such that the Conversion Price on and after each such Reset Date shall equal 105% of the arithmetic average of the Daily VWAPs for the five (5) consecutive Trading Days immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period); provided, that the minimum Conversion Price upon any such reset shall be the greater of (i) the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding such Reset Date and (ii) 30% of the Last Reported Sale Price of the Common Stock on the Transaction Agreement Date (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Transaction Agreement Date, but, for the avoidance of doubt, without giving effect to any adjustment pursuant to this Section 5(m)); provided, further, that the Conversion Price upon any such reset shall not be greater than the Conversion Price in effect immediately prior to such Reset Date.

(6) DEFAULTS AND REMEDIES.

(a) Event of Default. An "**Event of Default**" wherever used herein means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) a default in the payment in respect of the principal amount of this Note when the same becomes due and payable whether on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(ii) a default in the payment of any interest upon this Note when it becomes due and payable, and continuance of such default for a period of 30 days; and

(iii) the failure to comply with the obligation to convert Note upon exercise of the Holder's conversion right and such failure continues for 30 days;

(iv) failure by the Company to provide a Fundamental Change Repurchase Notice within the time required to provide such notice as set forth in Section 3(a) hereof within the time required to provide such notice as forth in the relevant Section and such failure continues for five days;

(v) default in the performance, or breach, of any covenant or agreement by the Company in this Note (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (iv) of this Section 6(a)), and continuance of such default or breach for a period of 60 consecutive days after written notice thereof has been given to the Company by the Holder;

(vi) an event of default (or comparable default) under any bonds, debentures or other instruments under which there may be issued evidences of indebtedness (other than this Note) by the Company or any of its Subsidiaries that is a Significant Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least $25 million, whether such indebtedness now exists or shall hereafter be created, which event of default (or comparable default) shall have resulted in the acceleration of the maturity of at least $25 million of such indebtedness prior to its express maturity or shall constitute a failure to pay at least $25 million of such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto and such event of default (or comparable default) shall not have been rescinded or annulled or such indebtedness shall not have been discharged and such event of default (or comparable default) continues for a period of 60 consecutive days after written notice to the Company by the Holder;

(vii) the entry against the Company or any of its Subsidiaries that is a Significant Subsidiary of a final judgment or final judgments for the payment of money in an aggregate amount in excess of $25 million (excluding any amounts covered by insurance), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 days after (x) the date on which the right to appeal or petition for review thereof has expired if no such appeal or review has commenced, or (y) the date on which all rights to appeal or petition for review have been extinguished;

(viii) the Company or any Subsidiary of the Company that is a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a custodian of it or for all or substantially all of its property; or

(D) makes a general assignment for the benefit of its creditors; or

(ix) a court of competent jurisdiction enters an order or decree under the Bankruptcy Law that:

(A) is for relief against the Company or any Subsidiary of the Company that is a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any Subsidiary of the Company that is a Significant Subsidiary or for all or substantially all of the property and assets of the Company or any such Subsidiary; or

(C) orders the liquidation of the Company or any Subsidiary of the Company that is a Significant Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) Acceleration.

(i) In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company)), unless the Principal amount of this Note shall have already become due and payable, the Holder of this Note by notice in writing to the Company may declare 100% of the principal of and accrued and unpaid interest on this Note to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Note contained to the contrary notwithstanding. If an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, the principal of this Note and accrued and unpaid interest shall be immediately due and payable.

After a declaration of acceleration with respect to this Note, but before a judgment or decree for payment of the money due has been obtained by the Holder as hereinafter in this Section 6 provided, the Holder, by written notice to the Company, may rescind and annul such declaration and its consequences if:

(A) the Company has paid or deposited with the Holder a sum sufficient to pay

(1) all sums paid or advanced by the Holder under this Note and the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel,

(2) all overdue interest on this Note,

(3) the Principal amount of this Note which has become due otherwise than by such declaration of acceleration and interest thereon at the cash interest rate borne by this Note, and

(4) to the extent that payment of such interest is lawful, interest upon overdue interest at the cash interest rate borne by this Note;

(B) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(C) all defaults or Events of Default, other than the non-payment of principal of and interest on this Note which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6(i).

No such rescission shall affect any subsequent default or impair any right consequent thereon.

(ii) Notwithstanding the foregoing and notwithstanding anything in this Note to the contrary, if the Company so elects, the sole remedy of Holder for an Event of Default relating to the Company's failure to comply with its reporting obligations as required under Section 9(b) of this Note shall, for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6(b)(i)), consist exclusively of the right to receive Additional Interest on this Note at an annual rate equal to (x) 0.25% of the outstanding principal amount of this Note for the first 90 days an Event of Default is continuing in such 180-day period, and (y) 0.50% of the outstanding principal amount of this Note for the remaining 90 days an Event of Default is continuing in such 180-day period. Additional Interest shall be payable in arrears on each Interest Date following the occurrence of such Event of Default in the same manner as regular interest on this Note. On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), this Note will be subject to acceleration as provided in Section 6(b)(i). The provisions set forth in this Section 6(b)(ii) shall not affect the rights of the Holder in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest upon an Event of Default in accordance with the provisions of this paragraph, this Note will be subject to acceleration as provided in Section 6(b)(i).

The Company may elect to pay Additional Interest as the sole remedy under this Section 6(b)(ii) by giving written notice to the Holder of such election on or before the close of business on the 5th Business Day after the date on which such Event of Default otherwise would occur. If the Company fails to timely give such notice or pay Additional Interest, this Note will be immediately subject to acceleration as provided in Section 6(b)(i).

Whenever in this Note there is mentioned, in any context, the payment of interest on, or in respect of, this Note, such mention shall be deemed to include mention of the payment of "**Additional Interest**" provided for in this Section 6(b)(ii) to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of such sections, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

(c) Collection of Indebtedness and Suits for Enforcement.

The Company covenants that if (x) default is made in the payment of any interest on this Note when such interest becomes due and payable and such default continues for a period of 30 days, or (y) default is made in the payment of the principal of this Note on the Maturity Date thereof, the Company will, upon demand of the Holder, pay to the Holder the whole amount then due and payable on this Note for principal and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by this Note; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Holder may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Holder may in its discretion proceed to protect and enforce its rights under this Note by such appropriate private or judicial proceedings as the Holder shall deem most effectual to protect and enforce such rights, whether for the specific enforcement of any covenant or agreement in this Note or in aid of the exercise of any power granted herein, or to enforce any other proper remedy. No recovery of any such judgment upon any property of the Company shall affect or impair any rights, powers or remedies of the Holder.

(d) Holder May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, the Holder (irrespective of whether the principal of the this Note shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Holder shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of this Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Holder (including any claim for the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel) allowed in such judicial proceeding.

(e) Unconditional Right of Holder to Receive Payment and to Convert.

Notwithstanding any other provision of this Note, the right of the Holder to receive payment of the principal amount, interest, Fundamental Change Repurchase Price, if any, or Additional Interest, if any, in respect of this Note, on or after the respective due dates expressed in this Note (whether upon repurchase or otherwise), and to convert this Note in accordance with Section 5, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Section 5, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

(f) Restoration of Rights and Remedies.

If the Holder has instituted any proceeding to enforce any right or remedy under this Note and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Holder, then and in every such case the Company and the Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Holder shall continue as though no such proceeding had been instituted.

(g) Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(h) Delay or Omission Not Waiver.

No delay or omission of the Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Section 6 or by law to the Holder may be exercised from time to time, and as often as may be deemed expedient, by the Holder, as the case may be.

(i) Waiver of Past Defaults.

Subject to Section 6(e), the Holder may waive an existing or past Default or Event of Default and its consequences and rescind any acceleration with respect to this Note and its consequences, except a default or Event of Default and any related acceleration with respect to the payment of the principal of or any accrued but unpaid interest on any Security, the failure to repurchase this Note in accordance with the provisions of Section 3 or the failure by the Company to deliver, upon conversion of this Note, the Conversion Consideration. When a default or Event of Default is waived, it is cured and ceases to exist.

(j) Undertaking for Costs.

The Company and the Holder agree that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Note, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant, but the provisions of this Section 6(j) shall not apply to any suit instituted by the Holder.

(k) Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Section 6 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Note are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Note invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(7) NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

(8) RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note, the Other Notes equal to 100% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Amendment and Restatement Date. So long as any of this Note or the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock specified above in this Section 8(a) as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "**Required Reserve Amount**"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Transaction Agreement) or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer this Note or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the Holder and the remaining holders of Other Notes a, pro rata based on the Principal amount of this Note and the Other Notes then held by such holders.

(b) Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Stock and provide each shareholder with an information statement with respect thereto or (y) hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of Conversion Shares that the Company is unable to deliver pursuant to this Section 8, and (ii) the highest trading price of the Common Stock in effect at any time during the period beginning on the applicable Conversion Date and ending on the date the Company makes the payment provided for in this sentence.

(9) COVENANTS.

(a) Payment on this Note.

(i) The Company shall promptly make all payments in respect of this Note on the dates and in the manner provided in this Note. Accrued and unpaid interest on this Note that is payable (whether or not punctually paid or duly provided for) on any Interest Date shall be paid to the Holder. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal and interest at the annual rate borne by this Note compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the day preceding the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

(b) Reports by Company.

(A) The Company shall deliver to the Holder, within 15 days after it is required to file the same with the SEC, copies of all annual reports, quarterly reports and other documents that it files with the SEC pursuant to Sections 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). The Holder agrees that any such information, documents or reports filed with the SEC pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall constitute delivery of the same to the Holder; provided, however, that the Company shall promptly notify the Holder in writing of any such filing.

(B) During any period in which the Company is not subject to Section 13 or 15(d) under the Exchange Act, the Company will make available to the holders or beneficial holders of this Note or the Common Stock issued upon conversion and prospective purchasers, upon their request, the information, if any, required under Rule 144A(d)(4) under the Securities Act.

(C) If, at any time during the six-month period beginning on, and including, the date which is six months after the Closing Date and ending on the date which is the one year anniversary of the Closing Date, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), the Company shall pay a one-time Additional Interest payment in respect of this Note at the rate of 0.50% per annum of the principal amount of this Note outstanding for each day during such period for which the Company's failure to file has occurred and is continuing. The Company shall pay any Additional Interest pursuant to this Section 9(b)(C) on the next Interest Date to the record holder.

(c) Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.

(d) Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or accrued but unpaid interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such law had been enacted.

(e) [Intentionally omitted].

(f) [Intentionally omitted].

(g) Consolidation; Merger; Sale of Assets.

(i) Company May Consolidate, Etc., Only on Certain Terms.

(A) The Company shall not consolidate with or merge with or into, or convey, transfer, or lease all or substantially all of the Company's property or assets to, another Person, unless:

(I) the resulting, surviving or transferee Person (if other than the Company) shall be a corporation organized and validly existing under the laws of the United States of America or any State thereof or the District of Columbia, and such Person shall expressly assume, the due and punctual payment of the principal of and interest on this Note and the performance and observance of every covenant of this Note to be performed or observed on the part of the Company;

(II) immediately after giving effect to the transaction, no default or Event of Default shall have occurred and be continuing; and

(III) if the Company will not be the resulting or surviving Person, the Company shall have, at or prior to the effective date of such consolidation or merger or conveyance, transfer or lease, delivered to the Holder an Officer's Certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease complies with this Section 9(g) and, if an amendment to this Note is required in connection with such transaction, such amendment complies with this Section 9(g), and that all conditions precedent herein provided for relating to such transaction have been complied with.

(ii) Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any transfer or lease of all or substantially all of the Company's assets in accordance with Section 9(g)(i), the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Note with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Note.

(h) Redemption or Repurchase of Shares of Series A Preferred Stock. For so long as any of the Notes remain outstanding, the Company shall not redeem or repurchase any shares of Series A Preferred Stock without the prior written consent of the Required Holders, unless the Notes are substantially concurrently repaid, repurchased, redeemed, discharged or otherwise satisfied in full.

(10) VOTE TO ISSUE, OR CHANGE THE TERMS OF, NOTES. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

(11) TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, and any shares of Common Stock issued pursuant to this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company at any time.

(12) REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d) and subject to Section 5(c)(iv)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 5(c)(iv) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in Principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal and Interest of this Note, from the Issuance Date.

(13) REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Registration Rights Agreement and the Transaction Agreement at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(14) PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

(15) CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note.

(16) FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder within the time limits set forth herein shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(17) DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Last Reported Sale Price or the Daily VWAP or the arithmetic calculation of the Conversion Rate, the Conversion Price or any Redemption Price, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt, or deemed receipt, of the Conversion Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Last Reported Sale Price or the Daily VWAP to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed, or (b) the disputed arithmetic calculation of the Conversion Rate, Conversion Price or any Redemption Price to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. Absent bad faith by the Holder, the Company shall pay the expenses of such investment bank or accountant.

(18) NOTICES; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.12 of the Transaction Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Change, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Holder, shall initially be as set forth in the Transaction Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions, which wire transfer instructions shall be provided to the Company at least two (2) Business Days prior to any applicable payment date. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

(19) CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

(20) WAIVER OF NOTICE. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Transaction Agreement.

(21) GOVERNING LAW; JURISDICTION; JURY TRIAL. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, enforcement and performance of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Transaction Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

(22) SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(23) DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

(24) TAXES.

(i) Any and all payments by the Company hereunder, including any amounts received in cash or in kind, including the delivery of shares of Common Stock, on a conversion, repayment or redemption of this Note and any amounts on account of interest or deemed interest, shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, imposed under any applicable law (collectively referred to as "**Taxes**") unless the Company is required to withhold or deduct any amounts for, or on account of Taxes pursuant to any applicable law. If the Company shall be required to withhold or deduct any Taxes from or in respect of any sum payable hereunder to the Holder in cash or in kind, (i) the sum payable shall be increased by the amount necessary to ensure that after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section 24) the Holder actually receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the Company shall make such withholdings or deductions and (iii) the Company shall pay the full amount withheld or deducted to the relevant governmental authority within the time required by applicable laws.

(ii) In addition, the Company agrees to pay to the relevant governmental authority in accordance with applicable law any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration, enforcement or performance of, or otherwise with respect to, this Note if any such tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder ("**Other Taxes**").

(iii) The Company shall deliver to the Holder official receipts, if any, in respect of any Taxes and Other Taxes payable hereunder promptly after payment of such Taxes and Other Taxes, or such other evidence of payment reasonably acceptable to the Holder.

(iv) The Company shall indemnify the Holder within ten (10) calendar days after written demand therefor, for the full amount of any Taxes or Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 24), plus any related additions to tax, interest or penalties, that are paid by the Holder to, or imposed on the Holder by, the relevant governmental authorities, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authorities.

(v) The obligations of the Company under this Section 24 shall survive the termination of this Note and the payment of this Note and all other amounts payable hereunder.

(25) CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**Additional Interest**" means all amounts, if any, payable pursuant to Sections 6(b)(ii) and 9(b)(C) hereof.

(b) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(c) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(d) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(e) "**Bloomberg**" means Bloomberg Financial Markets.

(f) "**Board of Directors**" means the board of directors of the Company or any duly authorized committee of such board, or any equivalent body in a limited partnership, limited liability company or other entity serving substantially the same function as a board of directors of a corporation.

(g) "**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the Corporate Trust Office or banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

(h) "**Capital Stock**" means, for any entity, any and all shares, equity interests, equity participations or other equity equivalents of or equity interests in (however designated) the equity of that entity, but excluding debt securities convertible into such equity.

(i) "**Close of Business**" means 5:00 p.m., New York City time.

(j) "**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

(k) "**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

(l) "**Conversion Shares**" means shares of Common Stock issuable by the Company pursuant to the terms of any of the Notes, including, without limitation, any related Interest Shares and any Interest converted or redeemed.

(m) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(n) "**Daily Cash Amount**" means, with respect to any Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such Trading Day.

(o) "**Daily Conversion Value**" means, with respect to any Trading Day, one-fifth (1/5th) of the product of (A) the Conversion Rate on such Trading Day; and (B) the Daily VWAP per share of Common Stock on such Trading Day.

(p) "**Daily Maximum Cash Amount**" means, with respect to a conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) five (5).

(q) "**Daily Share Amount**" means, with respect to any Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

(r) "**Daily VWAP**" means, for any Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "JAKK<EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(s) "**Default Settlement Method**" means, while the First Lien Loan is outstanding, Physical Settlement and, otherwise, Combination Settlement with a Specified Dollar Amount of $1,000 per $1,000 principal amount of Notes; provided, however, that the Company may, from time to time, change the Default Settlement Method by sending written notice of the new Default Settlement Method to the Holder.

(t) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, The NASDAQ Global Market, The NASDAQ Capital Market or the NYSE American.

(u) "**Equity Conditions**" means each of the following conditions: (i) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, either (x) all Registration Statements filed and required to be filed pursuant to the Registration Rights Agreement shall be effective and available for the resale of all remaining Registrable Securities including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement and there shall not have been any Grace Periods (as defined in the Registration Rights Agreement) or (y) all Conversion Shares issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, shall be eligible for sale without restriction pursuant to Rule 144 and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, the Common Stock is listed, quoted or designated for quotation on the Principal Market, on any other Eligible Market or on any established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company); (iii) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions may be issued in full without violating Section 5(d)(ii) hereof and, in the case of such Interest Shares, Section 5(d)(i) hereof (and analogous provisions under the Other Notes) and the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, there shall not have occurred either (A) the public announcement of a pending, proposed or intended Fundamental Change which has not been abandoned, terminated or consummated, (B) an Event of Default or (C) an event that with the passage of time or giving of notice would constitute an Event of Default; (v) the Company shall have no knowledge of any fact that would cause (x) the Registration Statements required pursuant to the Registration Rights Agreement not to be effective and available for the resale of all remaining Registrable Securities, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement or (y) any shares of Common Stock issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, not to be eligible for sale without restriction pursuant to Rule 144 promulgated under the Securities Act (subject to solely to any restrictions imposed on the Holder due to the Holder's affiliate status with respect to the Company) and any applicable state securities laws; and (vi) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(v) "**Equity Conditions Failure**" means that on the applicable date of determination, the Equity Conditions have not each been satisfied (or waived in writing by the Holder).

(w) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(x) "**Exchange Agreement**" means that certain Exchange Agreement, dated as of July 25, 2018, by and between the Company and the initial Holder of this Note pursuant to which the Company originally issued this Note.

(y) "**Ex-Dividend Date**" means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date upon which the shares of Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(z) "**First Lien Loan**" means the term loan under the First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, as such shall be amended, amended and restated or otherwise modified from time to time, among JAKKS Pacific, Inc., Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the lenders party thereto from time to time and Cortland Capital Market Services LLC, as administrative agent.

(aa) "**Fundamental Change**" means the occurrence after the Amendment and Restatement Date of any of the following events:

(1) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) other than the Permitted Holders, the Company or its Subsidiaries or any of their respective employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(2) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries; (any such exchange, offer, consolidation, merger, sale, lease or other transfer transaction or series of transactions being referred to herein as an "**event**"); provided, however, that such event shall not be a Fundamental Change if (x) the holders of more than 50% of the Company's shares of Common Stock immediately prior to such event, own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event or (y) the Permitted Holders own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event;

(3) the Company consummates the liquidation or dissolution of the Company;

(4) a Liquidity Event (as defined in the New Preferred Certificate of Designations (as defined in the Transaction Agreement), as may be amended, amended and restated, supplemented or otherwise modified from time to time); or

(5) on or after November 9, 2020, the Common Stock (or other common stock into which this Note is then convertible) ceases to be listed on at least one U.S. national securities exchange, or ceases to be quoted and traded on an established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system;

provided, however, no transaction or event described in clause (2) above shall constitute a Fundamental Change if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or event that would otherwise have constituted a Fundamental Change consists of shares of Publicly Traded Securities, and as a result of the transaction or event, this Note becomes convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 3(c)(ii)(B)).

(bb) "**Group**" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(cc) "**Interest Notice Due Date**" means the tenth (10th) Trading Day prior to the applicable Interest Date.

(dd) "**Interest Share Price**" means, with respect to any Interest Date, the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the applicable Interest Date, by (y) ten (10).

(ee) "**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national securities exchange on the relevant date, then the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" of the Common Stock will be determined by a U.S. nationally recognized independent investment banking firm selected by the Company for this purpose. The Last Reported Sale Price will be determined without reference to after-hours or extended market trading.

(ff) "**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change under clause (1) or (2) of the definition thereof (in the case of any Fundamental Change described in clause (2) of the definition thereof, determined without regard to the proviso in such clause but after giving effect to the exceptions and exclusions to the definition of Fundamental Change that otherwise apply).

(gg) "**Market Disruption Event**" means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock of an aggregate one-half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

(hh) "**Maturity Notice Due Date**" means the tenth (10th) Trading Day prior to the Maturity Date.

(ii) "**Maturity Share Price**" means the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the Maturity Date, by (y) ten (10).

(jj) "**Observation Period**" means, with respect to any conversion, the five (5) consecutive Trading Days immediately preceding the date on which the Holder delivers to the Company the related Conversion Notice or the date on which the Company delivers the Mandatory Conversion Notice to the Holder.

(kk) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(ll) "**Other Oasis Notes**" means the following convertible senior notes issued by the Company to the Holder: (i) the $21.5 million principal amount convertible senior note, issued on November 7, 2017 and amended and restated on August 9, 2019, and (ii) the $8.0 million principal amount convertible senior note, issued on August 9, 2019.

(mm) "**Permitted Holders**" means, without duplication, (a) each of the Consenting Convertible Noteholders (as defined in the Transaction Agreement), (b) the Holder, (c) Affiliates of the Persons referred to in clauses (a) and (b), (d) any Person that has no material assets (other than Capital Stock in the Company, cash and cash equivalents) and of which no Person or "group" (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than Persons referred to in clauses (a) through (c), holds more than 50% of the total voting power of the Capital Stock of such Person, and (e) any "group" the members of which include one or more Permitted Holders (a "**Permitted Holder Group**"), so long as no Person or "group", other than Persons referred to in clauses (a), (b), (c) and (d), beneficially owns more than 50% of the total Capital Stock in the Company held by the Permitted Holder Group; each, a "Permitted Holder".

(nn) "**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

(oo) "**Principal Market**" means The NASDAQ Global Select Market.

(pp) "**Publicly Traded Securities**" means shares of common stock that are traded on a U.S. national securities exchange or that will be so traded when issued or exchanged in connection with a transaction or event described in clause (b) of the definition of Fundamental Change.

(qq) "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(rr) "**Registration Rights Agreement**" means the Amended and Restated Registration Rights Agreement, dated as of the Amendment and Restatement Date, by and among the Company and the Holders party thereto relating to, among other things, the registration of the resale of the shares of Common Stock issuable upon conversion of this Note and the Other Notes.

(ss) "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(tt) "**Related Fund**" means, with respect to any Person, a fund or account managed by such Person or an Affiliate of such Person.

(uu) "**Required Holders**" means the holders of Notes representing at least a majority of the aggregate Principal amount of the Notes then outstanding and shall include the initial Holder of this Note so long as the initial Holder of this Note or any of its Affiliates holds any Notes.

(vv) "**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day.

(ww) "**SEC**" means the United States Securities and Exchange Commission.

(xx) "**Securities Act**" means the Securities Act of 1933, as amended.

(yy) "**Series A Preferred Stock**" means the Series A Preferred Stock, par value $0.001 per share, of the Company.

(zz) "**Significant Subsidiary**" means, at any date of determination, any Subsidiary that would constitute a "significant subsidiary" within the meaning of Article 1 of Regulation S-X promulgated under the Securities Act as in effect on the Closing Date.

(aaa) "**Specified Dollar Amount**" means, with respect to a conversion to which Combination Settlement applies, the maximum cash amount deliverable upon such conversion per $1,000 of Conversion Amount.

(bbb) "**Subsidiary**" means, with respect to any specified Person: (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); or (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(ccc) "**Trading Day**" means a day during which (i) trading in the Common Stock generally occurs on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, in the principal other market on which the Common Stock is then traded, (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market, and (iii) there is no Market Disruption Event. If the Common Stock (or other security for which a Last Reported Sale Price must be determined) is not so listed or traded, "Trading Day" means a "Business Day."

(ddd) "**Transaction Agreement**" means that certain Transaction Agreement, dated as of August 7, 2019, by and among the Company, the Holders party thereto and the other signatories thereto.

(eee) "**Transaction Agreement Date**" means August 7, 2019.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Amendment and Restatement Date set out above.

JAKKS PACIFIC, INC.

By: /s/ *Stephen Berman*
Name: Stephen Berman
Title: CEO

EXHIBIT I

JAKKS PACIFIC, INC.
CONVERSION NOTICE

Reference is made to the Amended and Restated Convertible Senior Note (the "**Note**") issued to the undersigned by JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock par value $0.001 per share (the "**Common Stock**") of the Company, as of the date specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Note.

Date of Conversion: _____

Aggregate Conversion Amount to be converted: _____

Please confirm the following information: _____

Conversion Price: _____

Number of shares of Common Stock to be issued, assuming Physical Settlement applies to such conversion : _____

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: _____

Facsimile Number and Electronic Mail: _____

Authorization: _____

By: _____

Title: _____

Dated: _____

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

_____

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock.

JAKKS PACIFIC, INC.

By: _____
Name:
Title:

EXHIBIT II
JAKKS PACIFIC, INC.
FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: JAKKS Pacific, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from JAKKS Pacific, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and accrued and unpaid interest at the cash interest rate thereon to, but excluding, such Fundamental Change Repurchase Date.

The certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)
Social Security or Other Taxpayer Identification Number
principal amount to be repaid (if less than all): $,000
NOTICE: The signature on the Fundamental Change Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 10.6

ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 5(c)(iv) AND 12(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iv) OF THIS NOTE.

JAKKS PACIFIC, INC.
CONVERTIBLE SENIOR NOTE

Issuance Date: August 9, 2019

Original Principal Amount:
U.S. $8,000,000

Certificate No.: 3

FOR VALUE RECEIVED, JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to OASIS INVESTMENTS II MASTER FUND LTD. or registered assigns (the "**Holder**") in cash and/or in shares of Common Stock (as defined below) the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise and as it may be increased by PIK Interest (as defined below) pursuant to Section 2(a)(ii), the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon an Interest Date (as defined below), the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Convertible Senior Note, including any Convertible Senior Note issued in exchange, transfer or replacement hereof, is referred to as this "**Note**" and is being issued pursuant to the Transaction Agreement. The Other Oasis Notes, and any notes issued in exchange, transfer or replacement thereof, are collectively referred to herein as the "**Other Notes**" and, together with this Note, the "**Notes**." Certain capitalized terms used herein are defined in Section 25.

(1) PAYMENTS OF PRINCIPAL; PREPAYMENT.

(a) On the Maturity Date, the Company shall pay to the Holder an amount representing all outstanding Principal, accrued and unpaid Interest on such Principal and Interest (the "**Maturity Amount**"). The "**Maturity Date**" shall be 91 days after the repayment in full of the First Lien Loan; provided, however, that in no event shall the Maturity Date be later than July 3, 2023. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, if any. The Maturity Amount shall be payable to the record holder of this Note on the Maturity Date in cash; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay the Maturity Amount in shares of Common Stock ("**Maturity Shares**") so long as there has been no Equity Conditions Failure during the period from the Maturity Notice Date (as defined below) preceding the Maturity Date through the Maturity Date or in a combination of cash and Maturity Shares. The Company shall deliver a written notice (the "**Maturity Notice**") to the Holder and each holder of Other Notes on or prior to the Maturity Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Maturity Notice Date**") which notice (i) either (a) confirms that the Maturity Amount shall be paid entirely in cash, or (b) elects to pay the Maturity Amount as Maturity Shares or a combination of cash and Maturity Shares and specifies the portion of the Maturity Amount, if any, that shall be paid in cash and the portion, if any, that shall be paid in Maturity Shares which amounts, when added together, must equal the Maturity Amount due on the Maturity Date, and (ii) if the Maturity Amount is to be paid, in whole or in part, in Maturity Shares, certifies that there has been no Equity Conditions Failure as of the Maturity Notice Date. If there is an Equity Conditions Failure as of the Maturity Notice Date, then unless the Company has elected to pay the Maturity Amount in cash, the Maturity Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If the Company confirmed (or is deemed to have confirmed by operation of this Section 1) the payment of the Maturity Amount in Maturity Shares, in whole or in part, and if there was no Equity Conditions Failure as of the Maturity Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure in connection with the Maturity Amount payment in Maturity Shares by operation of this Section 1) but an Equity Conditions Failure occurred between the Maturity Notice Date and any time prior to the Maturity Date (the "**Maturity Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during the Maturity Interim Period, then at the option of the Holder, the Holder may require the Company to pay the Maturity Amount in cash. If any portion of Maturity Amount shall be paid in Maturity Shares, then on the Maturity Date, the Company shall issue to the Holder, in accordance with Section 1(b), such number of shares of Common Stock equal to (a) the Maturity Amount payable in Maturity Shares divided by (b) the Maturity Share Price with any fractional share amounts rounded up to the nearest whole number of shares. All Maturity Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver a Maturity Election Notice in accordance with this Section 1(a), then the Company shall be deemed to have delivered an irrevocable Maturity Election Notice confirming the payment of cash. Except as expressly provided in this Section 1, the Company shall pay the Maturity Amount in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 1 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Maturity Shares and/or cash hereunder.

(b) When any Maturity Shares are to be issued, the Company shall (a) provided that the Company's transfer agent (the "**Transfer Agent**"), if any, is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Maturity Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the Maturity Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the Maturity Date, a certificate, registered in the name of the Holder or its designee, for the number of Maturity Shares to which the Holder shall be entitled. When any cash is to be paid on the Maturity Date, the Company shall pay such cash to the Holder by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock pursuant to this Section 1; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(2) INTEREST.

(a) Interest on this Note shall accrue as described below at the applicable Interest Rate on any outstanding Principal and shall be computed on the basis of a 360-day year comprised of twelve 30-day months and shall be payable in arrears on each May 1 and November 1 (each, an "**Interest Date**"). Interest on this Note shall be comprised of Shares/Cash Interest (as defined below) and PIK Interest.

(i) Shares/Cash Interest. Interest as described in this Section 2(a)(i) ("**Shares/Cash Interest**") shall commence accruing on the Issuance Date at a rate of 5.00% per annum (the "**Shares Interest Rate**") and shall be payable on each Interest Date to the record holder of this Note on the applicable Interest Date in shares of Common Stock ("**Interest Shares**") so long as there has been no Equity Conditions Failure or a Fundamental Change under paragraph (1) or (2) of the definition of Fundamental Change provided in Section 25 (a "**Change of Control**") during the period from the applicable Interest Notice Date (as defined below) through the applicable Interest Date; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay Shares/Cash Interest on any Interest Date in cash ("**Cash Interest**") at a rate of 3.25% per annum (together with the Shares Interest Rate, the "**Shares/Cash Interest Rate**") or in a combination of Cash Interest and Interest Shares. The Company shall deliver a written notice (each, an "**Interest Election Notice**") to the Holder and each holder of Other Notes on or prior to the applicable Interest Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Interest Notice Date**") which notice (i) either (a) confirms that Shares/Cash Interest to be paid on such Interest Date shall be paid entirely in Interest Shares, or (b) elects to pay Shares/Cash Interest on such Interest Date as Cash Interest or a combination of Cash Interest and Interest Shares and specifies the amount of Shares/Cash Interest that shall be paid as Cash Interest and the amount of Shares/Cash Interest, if any, that shall be paid in Interest Shares which amounts, when added together, must equal the applicable Shares/Cash Interest due on such Interest Date, and (ii) if Shares/Cash Interest is to be paid, in whole or in part, in Interest Shares, certifies that there has been no Equity Conditions Failure or Change of Control as of such Interest Notice Date. Any Interest Election Notice shall apply to the immediately following Interest Date and will, absent a contrary statement therein, apply to all future Interest Dates, unless the Company delivers with respect to any subsequent Interest Date an Election Notice on or prior to the applicable Interest Notice Date. If there is an Equity Conditions Failure or Change of Control as of the Interest Notice Date, then unless the Company has elected to pay such Shares/Cash Interest as Cash Interest, the applicable Interest Election Notice shall indicate that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If the Company confirmed (or is deemed to have confirmed by operation of this Section 2) the payment of the applicable Shares/Cash Interest in Interest Shares, in whole or in part, and if there was no Equity Conditions Failure or Change of Control as of the applicable Interest Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure or Change of Control in connection with such Shares/Cash Interest payment in Interest Shares by operation of this Section 2) but an Equity Conditions Failure or Change of Control occurred between the applicable Interest Notice Date and any time prior to the applicable Interest Date (an "**Interest Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure or Change of Control, as applicable, the Shares/Cash Interest shall be paid as Cash Interest. If there is an Equity Conditions Failure or Change of Control (which such Equity Conditions Failure or Change of Control is not waived in writing by the Holder) during such Shares/Cash Interest Interim Period, then at the option of the Holder, the Holder may require the Company to pay the amount of Shares/Cash Interest payable on the applicable Interest Date as Cash Interest. If any portion of Shares/Cash Interest for a particular Interest Date shall be paid in Interest Shares, then on the Interest Date, the Company shall issue to the Holder, in accordance with Section 2(b), such number of shares of Common Stock equal to (a) the amount of Shares/Cash Interest payable on the applicable Interest Date in Interest Shares divided by (b) the Interest Share Price with respect to such Interest Date with any fractional share amounts rounded up to the nearest whole number of shares. All Interest Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver an Interest Election Notice in accordance with this Section 2(a), then the Company shall be deemed to have delivered an irrevocable Interest Election Notice confirming the payment of Shares/Cash Interest in Interest Shares and shall be deemed to have certified that in connection with the delivery of Interest Shares on the applicable Interest Date no Equity Conditions Failure or Change of Control has occurred. Except as expressly provided in this Section 2, the Company shall pay the applicable Shares/Cash Interest in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 2 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Interest Shares and/or Cash Interest hereunder.

(ii) PIK Interest. In addition to the Cash/Interest accruing pursuant to Section 2(a)(i), Interest as described in this Section 2(a)(ii) ("**PIK Interest**") shall commence accruing on the Issuance Date at a rate of 2.75% per annum (the "**PIK Interest Rate**" and, together with the Shares/Cash Interest Rate, the "**Interest Rate**") and shall be payable in kind on each Interest Date following the Issuance Date to the record holder of this Note on the applicable Interest Date by having the outstanding principal amount of this Note automatically increase on such Interest Date by the amount of such PIK Interest.

(b) When any Interest Shares are to be issued on an Interest Date, the Company shall (a) provided that the Transfer Agent, if any, is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of Interest Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the applicable Interest Date, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Interest Date, a certificate, registered in the name of the Holder or its designee, for the number of Interest Shares to which the Holder shall be entitled. When any Cash Interest is to be paid on an Interest Date, the Company shall pay such Cash Interest to the Holder, in cash by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock as Interest pursuant to this Section 2; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(3) PURCHASE.

(a) Repurchase at Option of Holder upon a Fundamental Change.

If there shall occur a Fundamental Change at any time prior to the Maturity Date, then the Holder shall have the right, at the Holder's option, to require the Company to repurchase for cash all or any portion of this Note that is an integral multiple of $1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days and not more than 35 Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price, in cash, equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon at the cash interest rate to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). Repurchases under this Section 3(a) shall be made, at the option of the Holder, upon:

(A) delivery to the Company by the Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form attached as Exhibit II hereto on or prior to the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date; and

(B) delivery of this Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements, if any), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3(a) only if the Note so delivered to the Company shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(I) the certificate number of this Note to be delivered for repurchase;

(II) the portion of the principal amount of this Note to be repurchased, which must be $1,000 or an integral multiple thereof; and

(III) that this Note is to be repurchased by the Company pursuant to the applicable provisions of this Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3(a) shall be consummated by the payment of the Fundamental Change Repurchase Price pursuant to Section 3(c).

Notwithstanding anything herein to the contrary, if the Holder delivers to the Company the Fundamental Change Repurchase Notice contemplated by this Section 3(a), the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3(b).

On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide notice (the "**Fundamental Change Company Notice**") to the Holder and all holders of the Other Notes of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:

(A) the events causing the Fundamental Change;

(B) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case, the effective date of the Make-Whole Fundamental Change;

(C) the last date on which the Holder may exercise the repurchase right pursuant to this Section 3;

(D) the Fundamental Change Repurchase Price;

(E) the Fundamental Change Repurchase Date;

(F) the applicable Conversion Rate, and, if applicable, any adjustments to the applicable Conversion Rate;

(G) that the portion of this Note with respect to which a Fundamental Change Repurchase Notice has been delivered by the Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Note;

(H) that the Holder must exercise the repurchase right on or prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date (the "**Fundamental Change Expiration Time**");

(I) that the Holder shall have the right to withdraw any portion of this Note surrendered prior to the Fundamental Change Expiration Time; and

(J) the procedures that the Holder must follow to require the Company to repurchase all or any portion of this Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of this Note pursuant to this Section 3(a).

Notwithstanding the foregoing, the Company shall not be required to repurchase this Note in accordance with this Section 3 if a third party or any Subsidiary of the Company makes an offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3 and purchases this Note and all Other Notes validly tendered and not withdrawn under such purchase offer.

(b) Withdrawal of Fundamental Change Repurchase Notice.

(i) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Company in accordance with this Section 3(b) at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(A) the principal amount of this Note with respect to which such notice of withdrawal is being submitted,

(B) the certificate number of this Note, and

(C) the principal amount, if any, of this Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000.

(c) Payment of Fundamental Change Repurchase Price.

(i) The Company shall make payment for this Note surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) on the later of (x) the Fundamental Change Repurchase Date with respect to this Note (provided the Holder has satisfied the conditions in Section 3(a)) and (y) the time of the delivery of this Note to the Company by the Holder in the manner required by Section 3(a) as provided in Section 18(b).

(ii) If the Company makes the required payment of the Fundamental Change Repurchase Price by 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, then (x) such portion of this Note will cease to be outstanding, (y) interest will cease to accrue on such portion of this Note, and (z) all other rights of the Holder will terminate with respect to such portion of this Note with respect to which payment has been received by the Holder (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, upon delivery of this Note), whether or not this Note has been delivered to the Company.

(iii) Upon any surrender of this Note that is to be repurchased in part pursuant to Section 3(a), the Company shall execute and deliver to the Holder a new Note equal in principal amount to the unrepurchased portion of this Note surrendered in accordance with Section 12.

(4) REDEMPTION. If, at any time, a Person acquires voting Common Stock and, as a result, holds at least 49% of the issued and outstanding voting Common Stock (the "**Company Optional Redemption Trigger Event**"), the Company shall have the right to redeem all, but not less than all, of the Notes as designated in the Company Optional Redemption Notice on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The Notes subject to redemption pursuant to this Section 4 shall be redeemed by the Company on the Company Optional Redemption Date in cash by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company at a price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon (the "**Company Optional Redemption Price**"). The Company may exercise its right to require redemption under this Section 4 by delivering within not more than three (3) Trading Days following a Company Optional Redemption Triggering Event a written notice thereof by facsimile or electronic mail and overnight courier to the Holder and all, but not less than all, of the holders of the Other Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of the Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (i) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**"), which date shall not be less than five (5) Trading Days nor more than ten (10) Trading Days following the Company Optional Redemption Notice Date and (ii) state the aggregate principal amount of this Note and the Other Notes subject to Company Optional Redemption from the Holder and all of the holders of the Other Notes pursuant to this Section 4 (and analogous provisions under the Other Notes) on the Company Optional Redemption Date. To the extent redemptions required by this Section 4 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of this Note under this Section 4, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. If the Company elects to cause a Company Optional Redemption of this Note pursuant to this Section 4, then it must simultaneously take the same action in the same proportion with respect to any Other Notes.

(5) CONVERSION. At any time or times on or after the Issuance Date, this Note shall be convertible into shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 5.

(a) Conversion Right. Subject to the provisions of Section 5(d) and Section 5(e), at any time or times after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into Conversion Consideration (as defined in Section 5(c)(ii)(A)) in accordance with Section 5(c), at the Conversion Rate (as defined below); provided, that the Holder shall not be entitled to elect any conversion unless the Company would be permitted to settle the related Conversion Amount in the form of a Physical Settlement in accordance with Section 5(d)(i). The Company shall pay any and all transfer, stamp and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(b) Conversion Rate. The conversion rate with respect to a conversion of any Conversion Amount pursuant to this Section 5 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the portion of the Principal to be converted.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $1.00 per share, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Settlement Method. Upon any conversion of this Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this Section 5(c)(i), either (x) subject to Section 5(d), shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Physical Settlement**"); (y) solely cash (a "**Cash Settlement**"); or (z) subject to Section 5(d), a combination of cash and shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Combination Settlement**") (each, a "**Settlement Method**").

The Company will have the right to elect the Settlement Method applicable to any conversion of this Note; provided, however, that:

(A) subject to clause (B) below, if the Company elects a Settlement Method, then the Company will provide written notice of such Settlement Method to the Holder no later than the Close of Business on the Business Day immediately after such Conversion Date (as defined in Section 5(c)(iii));

(B) if the Company does not timely elect a Settlement Method with respect to a conversion of this Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a default or an Event of Default); and

(C) if the Company timely elects Combination Settlement with respect to a conversion of this Note but does not timely notify the Holder of this Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be $1,000 per $1,000 principal amount of this Note (and, for the avoidance of doubt, the failure to timely make such notification will not constitute a default or Event of Default).

(ii) Conversion Consideration.

(A) Subject to clause (B) below, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of Conversion Amount to be converted will be as follows:

(x) if Physical Settlement applies to such conversion, subject to clause (B) below and subject to Section 5(d), a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(y) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each Trading Day in the Observation Period for such conversion; or

(z) if Combination Settlement applies to such conversion, consideration consisting, subject to clause (B) below and subject to Section 5(d), of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each Trading Day in such Observation Period.

(B) If Physical Settlement or Combination Settlement applies to any conversion and the number of shares of Common Stock deliverable pursuant to clause (A) above upon such conversion is not a whole number, then such number will be rounded up to the nearest whole number.

(C) Blocker Notice. Notwithstanding the foregoing, if (i) the Company has elected a Physical Settlement or a Combination Settlement pursuant to the provisions set forth in this Section 5(c) and (ii) the Company is permitted to elect such Settlement Method if not for Section 5(d)(i), the Company may request that the Holder provide written notice to the Company confirming that such settlement will not conflict with Section 5(d)(i), and the Holder shall promptly respond to such request. If the Holder provides such written notice to the Company, the Company shall be permitted to rely on such notice.

(iii) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company and (B) if required by Section 5(c)(iv) but without delaying the Company's requirement to deliver Conversion Consideration on the Delivery Date (as defined below), surrender this Note to a common carrier for delivery to the Company as soon as practicable on or following such date (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction). On or before the first (1st) Business Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Transfer Agent. In the case of a Physical Settlement or a Combination Settlement, on or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice (the "**Delivery Date**"), the Company shall (x) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal At Custodian system or (y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled. In the case of a Cash Settlement or a Combination Settlement, the Company shall deliver to the Holder any cash included in the Conversion Consideration on the Delivery Date as provided in Section 18(b). If this Note is physically surrendered for conversion as required by Section 5(c)(iv) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive any shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date, irrespective of the date such Conversion Shares are credited to the Holder's account with DTC or the date of delivery of the certificates evidencing such Conversion Shares, as the case may be.

(iv) Registration; Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the Principal amount of the Notes (and stated interest thereon) held by such holders (the "**Registered Notes**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes, including, without limitation, the right to receive payments of Principal and Interest, if any, hereunder, notwithstanding notice to the contrary. A Registered Note may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a request to assign or sell all or part of any Registered Note by a Holder, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate Principal amount as the Principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 11 to the extent such transfer is not prohibited by Section 11. Notwithstanding anything to the contrary in this Section 5(c)(iv) or the limitations of Section 11, a Holder may assign any Note or any portion thereof to an Affiliate of such Holder or a Related Fund of such Holder without delivering a request to assign or sell such Note to the Company and the recordation of such assignment or sale in the Register (a "**Related Party Assignment**"); provided, that (x) the Company may continue to deal solely with such assigning or selling Holder unless and until such Holder has delivered a request to assign or sell such Note or portion thereof to the Company for recordation in the Register; (y) the failure of such assigning or selling Holder to deliver a request to assign or sell such Note or portion thereof to the Company shall not affect the legality, validity, or binding effect of such assignment or sale and (z) such assigning or selling Holder shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register (the "**Related Party Register**") comparable to the Register on behalf of the Company, and any such assignment or sale shall be effective upon recordation of such assignment or sale in the Related Party Register. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion.

(v) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice with respect to this Note and one or more holder of Other Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of this Note and the Other Notes submitted for conversion, the Company, subject to Section 5(d), shall convert from the Holder and each holder of Other Notes electing to have this Note or the Other Notes converted on such date a pro rata amount of such holder's portion of this Note and its Other Notes submitted for conversion based on the Principal amount of this Note and the Other Notes submitted for conversion on such date by such holder relative to the aggregate Principal amount of this Note and all Other Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable or the amount of cash payable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock and pay to the Holder the amount of cash not in dispute and resolve such dispute in accordance with Section 17.

(vi) Mandatory Conversion. If at any time, (i) the arithmetic average of the Last Reported Sale Price of the Common Stock for any twenty (20) consecutive Trading Days (the "**Mandatory Conversion Measuring Period**") equals or exceeds 150% of the Conversion Price on the Issuance Date (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Issuance Date) and (ii) no Equity Conditions Failure has occurred, the Company shall have the right to require the Holder and all, but not less than all, holders of Other Notes to convert all or any portion of the Conversion Amount then remaining under this Note and the Other Notes, as designated in the Mandatory Conversion Notice on the Mandatory Conversion Date (each as defined below) in accordance with Section 5(c) hereof at the Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "**Mandatory Conversion**") pursuant to the Settlement Method elected in accordance with Section 5(c)(i). The Company may exercise its right to require conversion under this Section 5(c)(vi) by delivering within not more than three (3) Trading Days following the end of such Mandatory Conversion Measuring Period a written notice thereof by facsimile and overnight courier to all, but not less than all, of the holders of Notes and the Transfer Agent (the "**Mandatory Conversion Notice**" and the date the Holder and all the holders of the Other Notes received such notice is referred to as the "**Mandatory Conversion Notice Date**"). The Mandatory Conversion Notice shall be irrevocable. The Mandatory Conversion Notice shall (i) state (a) the Trading Day on which the Mandatory Conversion shall occur, which Trading Day shall not be less than ten (10) Trading Days nor more than twelve (12) Trading Days following the Mandatory Conversion Notice Date (the "**Mandatory Conversion Date**"), (b) the aggregate Conversion Amount of the Notes which the Company has elected to be subject to Mandatory Conversion from the Holder and all of the holders of the Other Notes pursuant to this Section 5(c)(vi) (and analogous provisions under the Other Notes) and (c) the Settlement Method applicable to such Mandatory Conversion and number of shares of Common Stock to be issued and/or the amount of cash to be delivered to the Holder on the Mandatory Conversion Date and (ii) certify that there has been no Equity Conditions Failure as of the Mandatory Conversion Notice Date. If the Company confirmed that there was no such Equity Conditions Failure as of the Mandatory Conversion Notice Date but an Equity Conditions Failure occurs between the Mandatory Conversion Notice Date and any time through the Mandatory Conversion Date (the "**Mandatory Conversion Interim Period**"), the Company shall provide the Holder and each holder of Other Notes a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Mandatory Conversion Interim Period, then the Mandatory Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Conversion Amount subject to the Mandatory Conversion and the Holder shall be entitled to all the rights of a holder of this Note with respect to such Conversion Amount. Notwithstanding anything to the contrary in this Section 5(c)(vi), until the Mandatory Conversion has occurred, the Conversion Amount subject to the Mandatory Conversion may be converted, in whole or in part, by the Holder pursuant to Sections 5(c)(i), (ii) and (iii). All Conversion Amounts converted by the Holder after the Mandatory Conversion Notice Date shall reduce the Conversion Amount of this Note required to be converted on the Mandatory Conversion Date. If the Company elects to cause a Mandatory Conversion pursuant to this Section 5(c)(vi), then it must simultaneously take the same action in the same proportion with respect to the Other Notes.

(d) Beneficial Ownership Limitation.

(i) Beneficial Ownership. The Company shall not deliver any shares of Common Stock pursuant to this Note, to effect the conversion of any portion of this Note or otherwise, and the Holder shall not have the right to convert any portion of this Note, to the extent that after giving effect to such delivery, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such delivery other than in connection with (x) the delivery of Maturity Shares pursuant to Section 1 or (y) a Mandatory Conversion pursuant to Section 5(c)(vi). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable pursuant to this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d)(i). For purposes of this Section 5(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 5(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty- first (61st)day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 4.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61St) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. In connection with any conversion, for purposes of this Section 5(d)(i), the Company shall be permitted to rely on a notice delivered by the Holder pursuant to Section 5(c)(ii)(C) in connection with such conversion that represents that the settlement of such conversion complies with this Section 5(d)(i).

(ii) Principal Market Regulation. The Company shall not be obligated to issue any shares of Common Stock pursuant to the terms of this Note or any Other Notes, and the Holder shall not have the right to receive pursuant to the terms of this Note or any Other Notes any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the terms of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market , taking into account the Other Oasis Notes and any integrated transactions for purposes of the rules or regulations of the Principal Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount. Until such approval is obtained, no holder that acquires Notes pursuant to the Transaction Agreement (the "**Initial Holders**") shall be issued in the aggregate, pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the Principal amount of Notes issued to such Initial Holder pursuant to the Transaction Agreement on the Closing Date (as defined in the Transaction Agreement) and the denominator of which is the aggregate principal amount of all Notes issued to the Initial Holders pursuant to the Transaction Agreement on the Closing Date (with respect to each Initial Holder, the "**Exchange Cap Allocation**"). In the event that any Initial Holder shall sell or otherwise transfer any of such Initial Holder's Notes, the transferee shall be allocated a pro rata portion of such Initial Holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder of Notes shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the aggregate principal amount of the Notes then held by each such holder.

(e) [Intentionally omitted.]

(f) Increased Conversion Rate Applicable to Conversions in Connection with Make-Whole Fundamental Changes.

(i) If the Holder elects to convert this Note at any time from, and including, the Effective Date (as defined below) of a Make-Whole Fundamental Change until, and including, the close of business on the second Scheduled Trading Day immediately preceding the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change, or the 35th Business Day immediately following the Effective Date of such Make-Whole Fundamental Change (in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"), the applicable Conversion Rate shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described in this Section 5(f). The Company will notify the Holder and the holders of the Other Notes of the anticipated Effective Date of the Make-Whole Fundamental Change and issue a press release as soon as practicable after the Company first determines the anticipated Effective Date of such Make-Whole Fundamental Change, and use commercially reasonable efforts to make such determination in time to deliver written notice 25 Scheduled Trading Days in advance of the anticipated Effective Date; provided, that, the Company will not be required to give written notice or issue a press release more than 25 Scheduled Trading Days in advance of the anticipated Effective Date.

(ii) The number of Additional Shares by which the Conversion Rate will be increased for conversions that occur during the Make-Whole Fundamental Change Period will be determined by reference to the table set forth below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed paid) per share of the Company's Common Stock in the Make-Whole Fundamental Change. If holders of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on and including the Trading Day preceding the Effective Date of the Make-Whole Fundamental Change.

(iii) The following table sets forth the number of Additional Shares, if any, by which the Conversion Rate will be increased for each Stock Price and Effective Date set forth in the table below:

Make-Whole Conversion Rate Adjustment
(per $1,000 Conversion Amount)

	Effective Date					
Stock Price	**August 7, 2019**	**May 1, 2020**	**May 1, 2021**	**May 1, 2022**	**May 1, 2023**	**July 3, 2023**
$ 0.85	180.64	180.64	180.64	180.64	180.64	180.64
$ 0.90	171.78	173.11	170.89	159.00	119.44	111.11
$ 1.00	127.90	127.30	121.80	105.30	50.70	0
$ 1.12	90.27	88.57	81.52	64.11	15.00	0
$ 1.25	62.08	59.92	52.88	37.28	3.92	0
$ 1.38	42.39	40.29	33.99	21.30	1.30	0
$ 1.50	0	0	0	0	0	0

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(x) If the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(y) If the Stock Price is greater than $1.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(z) If the Stock Price is less than $0.85 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(iv) The Stock Prices set forth in the first column of the table in Section 5(f)(iii) shall be adjusted as of any date on which the Conversion Rate is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 5(g).

(v) As soon as practicable after the Effective Date of any Make-Whole Fundamental Change but in no event later than five Trading Days after such Effective Date, the Company shall mail to the Holder and all holders of the Other Notes written notice of, and shall issue a press release announcing, the Effective Date of such Make-Whole Fundamental Change and make such press release available on the Company's web site. If applicable, such notice and press release shall also specify the amount, if any, by which the Conversion Rate shall be increased in accordance with the provisions of this Section 5(f) and the period in which this Note may be converted at the increased Conversion Rate.

(vi) Nothing in this Section 5(f) shall prevent an adjustment to the Conversion Rate pursuant to Section 5(g).

(vii) If the Holder elects to convert this Note prior to the Effective Date of the Make-Whole Fundamental Change, the Holder shall not be entitled to any adjustment to the Conversion Rate or any Additional Shares under this Section 5(f) in connection with such conversion.

(g) Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company will not make any adjustment to the Conversion Rate if the Holder participates, as a result of holding this Note, in any of the transactions described in this Section 5(g) at the same time as holders of the Common Stock participate, without having to convert this Note as if such Holder held, for each $1,000 Principal amount of this Note, a number of shares of Common Stock equal to the Conversion Rate in effect at the time any such adjustment would otherwise be required.

(i) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all of the shares of Common Stock, or if the Company effects a share split or share combination of the Common Stock, the applicable Conversion Rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be; and

OS = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 5(g)(i) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

For purposes of this Section 5(g)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the applicable ten-consecutive-Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property to all or substantially all holders of its Common Stock other than (x) dividends or distributions (including share splits) or rights, options or warrants covered by Section 5(g)(i) or Section 5(g)(ii), (y) dividends or distributions paid exclusively in cash, and (z) Spin-Offs to which the provisions set forth below in this Section 5(g)(iii) shall apply, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution.

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution; provided that if "FMV" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provisions shall be made so that each Holder shall have the right to receive on conversion in respect of each $1,000 principal amount of Principal outstanding under this Note, in addition to the shares of Common Stock to which such Holder shall be entitled, the amount and kind of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other of the Company's assets or property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the record date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines "FMV" for purposes of this Section 5(g)(iii) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 5(g)(iii) where there has been a dividend or other distribution on all or substantially all shares of the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are or will be when issued listed on a securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"), and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(g)(iii) shall be made immediately after the opening of business on the day after the last day of the Valuation Period, but shall become effective as of the opening of business on the Ex-Dividend Date for the Spin-Off. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Ex- Dividend Date of any Spin-Off, references in the portion of this Section 5(g)(iii) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the Conversion Date for such conversion.

For the purposes of this Section 5(g)(iii) (and subject in all respect to Section 5(1)), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 5(g) (and no adjustment to the Conversion Rate under this Section 5(g) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 5(g)(iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Closing Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 5(g)(iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 5(g)(iii), Section 5(g)(i), and Section 5(g)(ii), any dividend or distribution to which this Section 5(g)(iii) is applicable that also includes shares of Common Stock to which Section 5(g)(i) applies, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 5(g)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 5(g) (iii) applies (and any Conversion Rate adjustment required by this Section 5(g)(iii) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 5(g)(i) and Section 5(g)(ii) with respect to such dividend or distribution shall then be made), except that if determined by the Company (A) "the Ex-Dividend Date for such distribution" and "the Ex-Dividend Date relating to such distribution of such rights, options or warrants" within the meaning of Section 5(g)(i) and Section 5(g)(ii), as the case may be, shall be deemed to be the Ex-Dividend Date for such dividend or distribution for purposes of Section 5(g)(iii), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be" within the meaning of Section 5(g)(i) or "outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution" within the meaning of Section 5(g)(ii).

(iv) If the Company makes or pays cash dividends or distributions to all or substantially all holders of its outstanding Common Stock in any fiscal quarter, the applicable Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; provided that if "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each $1,000 principal amount of Principal outstanding under this Note, the amount of cash such holder would have received had the Holder owned a number of shares equal to the Conversion Rate on the record date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 5(g)(iv), in the event of any reclassification of the Common Stock, as a result of which this Note becomes convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 5(g)(iv), references in this Section to one share of Common Stock or Last Reported Sale Prices of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which this Note is then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(v) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and if the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where

CR = the applicable Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "**Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer); OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender offer or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

Such adjustment under this Section 5(g)(v) shall become effective at the opening of business on the Trading Day next succeeding the Expiration Date. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5(g)(v) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 5(g)(v).

(vi) For purposes of this Section 5(g), the term "**record date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(vii) In addition to those required by clauses (i), (ii), (iii), (iv) and (v) of this Section 5(g), and to the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Stock Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(viii) The Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(ix) All calculations and other determinations under this Section 5 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share. The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (x) upon any conversion and (y) on each of the 22 Scheduled Trading Days immediately preceding the Maturity Date.

(x) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Holder and all holders of the Other Notes an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment and issue a press release containing the relevant information (and make such press release available on the Company's web site). Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(xi) For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(xii) Notwithstanding this Section 5(g) or any other provision of this Note, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, the close of business on the third Trading Day immediately following the relevant Conversion Date, the Board of Directors may make adjustments to the Conversion Rate and the number of shares of Common Stock issuable upon conversion of this Note as are necessary or appropriate to effect the intent of this Section 5(g) and the other provisions of this Section 5 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 5(g)(xii) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(xiii) Except as set forth in this Section 5, the Company shall not adjust the Conversion Rate. The applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of the Common Stock under any plan;

(B) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of the Company's Subsidiaries;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (B) of this subsection and outstanding as of the Closing Date;

(D) for a change in the par value of the Common Stock;

(E) for accrued and unpaid interest; or

(F) except as stated herein, for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities.

(h) Effect of Reclassification, Consolidation, Merger or Sale.

(i) Upon the occurrence of

(A) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 5(g)(i)),

(B) any consolidation, merger, combination or binding share exchange involving the Company, or

(C) any sale, lease or conveyance of all or substantially all of the property and assets of the Company to any other Person,

(any such event a "**Merger Event**") in each case as a result of which the Common Stock would be converted into cash, securities or other property or assets with respect to or in exchange for such Common Stock, then at the effective time of such transaction, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that at and after the effective time of such transaction, the right to convert this Note will be changed into a right to convert it as set forth in this Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversation Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction (the "**Reference Property**"), subject to the provisions of Section 5(h)(ii). The Company shall not become a party to any such transaction unless its terms are consistent with this Section 5(h). Such amendment shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5 in the judgment of the Board of Directors or the board of directors of the successor Person and acceptable to the Holder. If, in the case of any Merger Event the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such amendment shall also be executed by such other Person with respect to the delivery of Reference Property upon conversion. For purposes of the foregoing, if any Merger Event causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which this Note will be convertible as set forth in this Note shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock (or a plurality thereof if holders of Common Stock are entitled to make multiple elections pursuant to the applicable Merger Event) that affirmatively make such an election (the "**Weighted Average Consideration**").

(ii) With respect to each $1,000 Principal amount of this Note surrendered for conversion after the effective date of any Merger Event, the Company shall pay the Conversion Consideration in units of Reference Property (each consisting of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event shall have received (or shall be deemed to have received) in such Merger Event) in accordance with Section 5(c) subject to the foregoing. The Company shall deliver to the converting Holder a number of units of Reference Property equal to (1) the aggregate Conversion Amount, divided by $1,000, multiplied by (2) the then-applicable Conversion Rate.

(iii) In the event that this Note becomes convertible into Reference Property pursuant to this Section 5(h), the Company shall notify Holder in writing. If applicable, the Company shall notify the Holder in writing of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(iv) Notwithstanding any of the provisions of Section 5(g), if this Section 5(h) applies to any event or occurrence, Section 5(g) shall not apply.

(v) The above provisions of this Section shall similarly apply to successive Merger Events.

(i) Taxes on Shares Issued.

If a Holder submits this Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the Holder shall pay any such tax that is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Company may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Company receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude, subject to Section 24, any tax withholding required by law or regulations.

(j) Reservation of Shares; Shares to be Fully Paid; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion.

The Company covenants that all shares of Common Stock that may be issued upon conversion of this Note shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of this Note on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

(k) Notice to Holder Prior to Certain Actions.

In case:

(i) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 5(g); or

(ii) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or

(iii) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company; the Company shall deliver, by electronic transmission, to the Holder, as promptly as practicable but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

(l) Stockholder Rights Plans.

To the extent that the Company has a stockholder rights plan or other "poison pill" in effect upon conversion of this Note, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If, however, prior to the time of conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the Holder would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or other assets or property having a fair market value of the rights as provided in Section 5(g)(iii), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(m) Conversion Rate Resets. On each of February 9 and August 9 (each, a "**Reset Date**"), with the first Reset Date being February 9, 2020, the Conversion Rate shall be reset such that the Conversion Price on and after each such Reset Date shall equal 105% of the arithmetic average of the Daily VWAPs for the five (5) consecutive Trading Days immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period); provided, that the minimum Conversion Price upon any such reset shall be the greater of (i) the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding such Reset Date and (ii) 30% of the Last Reported Sale Price of the Common Stock on the Transaction Agreement Date (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Transaction Agreement Date, but, for the avoidance of doubt, without giving effect to any adjustment pursuant to this Section 5(m)); provided, further, that the Conversion Price upon any such reset shall not be greater than the Conversion Price in effect immediately prior to such Reset Date.

(6) DEFAULTS AND REMEDIES.

(a) Event of Default. An "**Event of Default**" wherever used herein means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) a default in the payment in respect of the principal amount of this Note when the same becomes due and payable whether on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(ii) a default in the payment of any interest upon this Note when it becomes due and payable, and continuance of such default for a period of 30 days; and

(iii) the failure to comply with the obligation to convert Note upon exercise of the Holder's conversion right and such failure continues for 30 days;

(iv) failure by the Company to provide a Fundamental Change Repurchase Notice within the time required to provide such notice as set forth in Section 3(a) hereof within the time required to provide such notice as forth in the relevant Section and such failure continues for five days;

(v) default in the performance, or breach, of any covenant or agreement by the Company in this Note (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (iv) of this Section 6(a)), and continuance of such default or breach for a period of 60 consecutive days after written notice thereof has been given to the Company by the Holder;

(vi) an event of default (or comparable default) under any bonds, debentures or other instruments under which there may be issued evidences of indebtedness (other than this Note) by the Company or any of its Subsidiaries that is a Significant Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least $25 million, whether such indebtedness now exists or shall hereafter be created, which event of default (or comparable default) shall have resulted in the acceleration of the maturity of at least $25 million of such indebtedness prior to its express maturity or shall constitute a failure to pay at least $25 million of such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto and such event of default (or comparable default) shall not have been rescinded or annulled or such indebtedness shall not have been discharged and such event of default (or comparable default) continues for a period of 60 consecutive days after written notice to the Company by the Holder;

(vii) the entry against the Company or any of its Subsidiaries that is a Significant Subsidiary of a final judgment or final judgments for the payment of money in an aggregate amount in excess of $25 million (excluding any amounts covered by insurance), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 days after (x) the date on which the right to appeal or petition for review thereof has expired if no such appeal or review has commenced, or (y) the date on which all rights to appeal or petition for review have been extinguished;

(viii) the Company or any Subsidiary of the Company that is a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a custodian of it or for all or substantially all of its property; or

(D) makes a general assignment for the benefit of its creditors; or

(ix) a court of competent jurisdiction enters an order or decree under the Bankruptcy Law that:

(A) is for relief against the Company or any Subsidiary of the Company that is a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any Subsidiary of the Company that is a Significant Subsidiary or for all or substantially all of the property and assets of the Company or any such Subsidiary; or

(C) orders the liquidation of the Company or any Subsidiary of the Company that is a Significant Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) Acceleration.

(i) In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company)), unless the Principal amount of this Note shall have already become due and payable, the Holder of this Note by notice in writing to the Company may declare 100% of the principal of and accrued and unpaid interest on this Note to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Note contained to the contrary notwithstanding. If an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, the principal of this Note and accrued and unpaid interest shall be immediately due and payable.

After a declaration of acceleration with respect to this Note, but before a judgment or decree for payment of the money due has been obtained by the Holder as hereinafter in this Section 6 provided, the Holder, by written notice to the Company, may rescind and annul such declaration and its consequences if:

(A) the Company has paid or deposited with the Holder a sum sufficient to pay

(1) all sums paid or advanced by the Holder under this Note and the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel,

(2) all overdue interest on this Note,

(3) the Principal amount of this Note which has become due otherwise than by such declaration of acceleration and interest thereon at the cash interest rate borne by this Note, and

(4) to the extent that payment of such interest is lawful, interest upon overdue interest at the cash interest rate borne by this Note;

(B) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(C) all defaults or Events of Default, other than the non-payment of principal of and interest on this Note which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6(i).

No such rescission shall affect any subsequent default or impair any right consequent thereon.

(ii) Notwithstanding the foregoing and notwithstanding anything in this Note to the contrary, if the Company so elects, the sole remedy of Holder for an Event of Default relating to the Company's failure to comply with its reporting obligations as required under Section 9(b) of this Note shall, for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6(b)(i)), consist exclusively of the right to receive Additional Interest on this Note at an annual rate equal to (x) 0.25% of the outstanding principal amount of this Note for the first 90 days an Event of Default is continuing in such 180-day period, and (y) 0.50% of the outstanding principal amount of this Note for the remaining 90 days an Event of Default is continuing in such 180-day period. Additional Interest shall be payable in arrears on each Interest Date following the occurrence of such Event of Default in the same manner as regular interest on this Note. On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), this Note will be subject to acceleration as provided in Section 6(b)(i). The provisions set forth in this Section 6(b)(ii) shall not affect the rights of the Holder in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest upon an Event of Default in accordance with the provisions of this paragraph, this Note will be subject to acceleration as provided in Section 6(b)(i).

The Company may elect to pay Additional Interest as the sole remedy under this Section 6(b)(ii) by giving written notice to the Holder of such election on or before the close of business on the 5th Business Day after the date on which such Event of Default otherwise would occur. If the Company fails to timely give such notice or pay Additional Interest, this Note will be immediately subject to acceleration as provided in Section 6(b)(i).

Whenever in this Note there is mentioned, in any context, the payment of interest on, or in respect of, this Note, such mention shall be deemed to include mention of the payment of "**Additional Interest**" provided for in this Section 6(b)(ii) to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of such sections, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

(c) Collection of Indebtedness and Suits for Enforcement.

The Company covenants that if (x) default is made in the payment of any interest on this Note when such interest becomes due and payable and such default continues for a period of 30 days, or (y) default is made in the payment of the principal of this Note on the Maturity Date thereof, the Company will, upon demand of the Holder, pay to the Holder the whole amount then due and payable on this Note for principal and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by this Note; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Holder may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Holder may in its discretion proceed to protect and enforce its rights under this Note by such appropriate private or judicial proceedings as the Holder shall deem most effectual to protect and enforce such rights, whether for the specific enforcement of any covenant or agreement in this Note or in aid of the exercise of any power granted herein, or to enforce any other proper remedy. No recovery of any such judgment upon any property of the Company shall affect or impair any rights, powers or remedies of the Holder.

(d) Holder May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, the Holder (irrespective of whether the principal of the this Note shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Holder shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of this Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Holder (including any claim for the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel) allowed in such judicial proceeding.

(e) Unconditional Right of Holder to Receive Payment and to Convert.

Notwithstanding any other provision of this Note, the right of the Holder to receive payment of the principal amount, interest, Fundamental Change Repurchase Price, if any, or Additional Interest, if any, in respect of this Note, on or after the respective due dates expressed in this Note (whether upon repurchase or otherwise), and to convert this Note in accordance with Section 5, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Section 5, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

(f) Restoration of Rights and Remedies.

If the Holder has instituted any proceeding to enforce any right or remedy under this Note and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Holder, then and in every such case the Company and the Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Holder shall continue as though no such proceeding had been instituted.

(g) Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(h) Delay or Omission Not Waiver.

No delay or omission of the Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Section 6 or by law to the Holder may be exercised from time to time, and as often as may be deemed expedient, by the Holder, as the case may be.

(i) Waiver of Past Defaults.

Subject to Section 6(e), the Holder may waive an existing or past Default or Event of Default and its consequences and rescind any acceleration with respect to this Note and its consequences, except a default or Event of Default and any related acceleration with respect to the payment of the principal of or any accrued but unpaid interest on any Security, the failure to repurchase this Note in accordance with the provisions of Section 3 or the failure by the Company to deliver, upon conversion of this Note, the Conversion Consideration. When a default or Event of Default is waived, it is cured and ceases to exist.

(j) Undertaking for Costs.

The Company and the Holder agree that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Note, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant, but the provisions of this Section 6(j) shall not apply to any suit instituted by the Holder.

(k) Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Section 6 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Note are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Note invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(7) NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

(8) RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note, the Other Notes equal to 100% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note or the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock specified above in this Section 8(a) as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "**Required Reserve Amount**"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Transaction Agreement) or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer this Note or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the Holder and the remaining holders of Other Notes a, pro rata based on the Principal amount of this Note and the Other Notes then held by such holders.

(b) Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Stock and provide each shareholder with an information statement with respect thereto or (y) hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of Conversion Shares that the Company is unable to deliver pursuant to this Section 8, and (ii) the highest trading price of the Common Stock in effect at any time during the period beginning on the applicable Conversion Date and ending on the date the Company makes the payment provided for in this sentence.

(9) COVENANTS.

(a) Payment on this Note.

(i) The Company shall promptly make all payments in respect of this Note on the dates and in the manner provided in this Note. Accrued and unpaid interest on this Note that is payable (whether or not punctually paid or duly provided for) on any Interest Date shall be paid to the Holder. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal and interest at the annual rate borne by this Note compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the day preceding the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

(b) Reports by Company.

(A) The Company shall deliver to the Holder, within 15 days after it is required to file the same with the SEC, copies of all annual reports, quarterly reports and other documents that it files with the SEC pursuant to Sections 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). The Holder agrees that any such information, documents or reports filed with the SEC pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall constitute delivery of the same to the Holder; provided, however, that the Company shall promptly notify the Holder in writing of any such filing.

(B) During any period in which the Company is not subject to Section 13 or 15(d) under the Exchange Act, the Company will make available to the holders or beneficial holders of this Note or the Common Stock issued upon conversion and prospective purchasers, upon their request, the information, if any, required under Rule 144A(d)(4) under the Securities Act.

(C) If, at any time during the six-month period beginning on, and including, the date which is six months after the Closing Date and ending on the date which is the one year anniversary of the Closing Date, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), the Company shall pay a one-time Additional Interest payment in respect of this Note at the rate of 0.50% per annum of the principal amount of this Note outstanding for each day during such period for which the Company's failure to file has occurred and is continuing. The Company shall pay any Additional Interest pursuant to this Section 9(b)(C) on the next Interest Date to the record holder.

(c) Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.

(d) Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or accrued but unpaid interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such law had been enacted.

(e) [Intentionally omitted].

(f) [Intentionally omitted].

(g) Consolidation; Merger; Sale of Assets.

(i) Company May Consolidate, Etc., Only on Certain Terms.

(A) The Company shall not consolidate with or merge with or into, or convey, transfer, or lease all or substantially all of the Company's property or assets to, another Person, unless:

(I) the resulting, surviving or transferee Person (if other than the Company) shall be a corporation organized and validly existing under the laws of the United States of America or any State thereof or the District of Columbia, and such Person shall expressly assume, the due and punctual payment of the principal of and interest on this Note and the performance and observance of every covenant of this Note to be performed or observed on the part of the Company;

(II) immediately after giving effect to the transaction, no default or Event of Default shall have occurred and be continuing; and

(III) if the Company will not be the resulting or surviving Person, the Company shall have, at or prior to the effective date of such consolidation or merger or conveyance, transfer or lease, delivered to the Holder an Officer's Certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease complies with this Section 9(g) and, if an amendment to this Note is required in connection with such transaction, such amendment complies with this Section 9(g), and that all conditions precedent herein provided for relating to such transaction have been complied with.

(ii) Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any transfer or lease of all or substantially all of the Company's assets in accordance with Section 9(g)(i), the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Note with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Note.

(h) Redemption or Repurchase of Shares of Series A Preferred Stock. For so long as any of the Notes remain outstanding, the Company shall not redeem or repurchase any shares of Series A Preferred Stock without the prior written consent of the Required Holders, unless the Notes are substantially concurrently repaid, repurchased, redeemed, discharged or otherwise satisfied in full.

(10) VOTE TO ISSUE, OR CHANGE THE TERMS OF, NOTES. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

(11) TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, and any shares of Common Stock issued pursuant to this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company at any time.

(12) REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d) and subject to Section 5(c)(iv)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 5(c)(iv) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in Principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal and Interest of this Note, from the Issuance Date.

(13) REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Registration Rights Agreement and the Transaction Agreement at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(14) PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

(15) CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note.

(16) FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder within the time limits set forth herein shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(17) DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Last Reported Sale Price or the Daily VWAP or the arithmetic calculation of the Conversion Rate, the Conversion Price or any Redemption Price, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt, or deemed receipt, of the Conversion Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Last Reported Sale Price or the Daily VWAP to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed, or (b) the disputed arithmetic calculation of the Conversion Rate, Conversion Price or any Redemption Price to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. Absent bad faith by the Holder, the Company shall pay the expenses of such investment bank or accountant.

(18) NOTICES; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.12 of the Transaction Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Change, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Holder, shall initially be as set forth in the Transaction Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions, which wire transfer instructions shall be provided to the Company at least two (2) Business Days prior to any applicable payment date. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

(19) CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

(20) WAIVER OF NOTICE. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Transaction Agreement.

(21) GOVERNING LAW; JURISDICTION; JURY TRIAL. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, enforcement and performance of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Transaction Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

(22) SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(23) DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

(24) TAXES.

(i) Any and all payments by the Company hereunder, including any amounts received in cash or in kind, including the delivery of shares of Common Stock, on a conversion, repayment or redemption of this Note and any amounts on account of interest or deemed interest, shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, imposed under any applicable law (collectively referred to as "**Taxes**") unless the Company is required to withhold or deduct any amounts for, or on account of Taxes pursuant to any applicable law. If the Company shall be required to withhold or deduct any Taxes from or in respect of any sum payable hereunder to the Holder in cash or in kind, (i) the sum payable shall be increased by the amount necessary to ensure that after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section 24) the Holder actually receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the Company shall make such withholdings or deductions and (iii) the Company shall pay the full amount withheld or deducted to the relevant governmental authority within the time required by applicable laws.

(ii) In addition, the Company agrees to pay to the relevant governmental authority in accordance with applicable law any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration, enforcement or performance of, or otherwise with respect to, this Note if any such tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder ("**Other Taxes**").

(iii) The Company shall deliver to the Holder official receipts, if any, in respect of any Taxes and Other Taxes payable hereunder promptly after payment of such Taxes and Other Taxes, or such other evidence of payment reasonably acceptable to the Holder.

(iv) The Company shall indemnify the Holder within ten (10) calendar days after written demand therefor, for the full amount of any Taxes or Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 24), plus any related additions to tax, interest or penalties, that are paid by the Holder to, or imposed on the Holder by, the relevant governmental authorities, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authorities.

(v) The obligations of the Company under this Section 24 shall survive the termination of this Note and the payment of this Note and all other amounts payable hereunder.

(25) CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**Additional Interest**" means all amounts, if any, payable pursuant to Sections 6(b)(ii) and 9(b)(C) hereof.

(b) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(c) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(d) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(e) "**Bloomberg**" means Bloomberg Financial Markets.

(f) "**Board of Directors**" means the board of directors of the Company or any duly authorized committee of such board, or any equivalent body in a limited partnership, limited liability company or other entity serving substantially the same function as a board of directors of a corporation.

(g) "**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the Corporate Trust Office or banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

(h) "**Capital Stock**" means, for any entity, any and all shares, equity interests, equity participations or other equity equivalents of or equity interests in (however designated) the equity of that entity, but excluding debt securities convertible into such equity.

(i) "**Close of Business**" means 5:00 p.m., New York City time.

(j) "**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

(k) "**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

(l) "**Conversion Shares**" means shares of Common Stock issuable by the Company pursuant to the terms of any of the Notes, including, without limitation, any related Interest Shares and any Interest converted or redeemed.

(m) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(n) "**Daily Cash Amount**" means, with respect to any Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such Trading Day.

(o) "**Daily Conversion Value**" means, with respect to any Trading Day, one-fifth (1/5th) of the product of (A) the Conversion Rate on such Trading Day; and (B) the Daily VWAP per share of Common Stock on such Trading Day.

(p) "**Daily Maximum Cash Amount**" means, with respect to a conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) five (5).

(q) "**Daily Share Amount**" means, with respect to any Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

(r) "**Daily VWAP**" means, for any Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "JAKK<EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(s) "**Default Settlement Method**" means, while the First Lien Loan is outstanding, Physical Settlement and, otherwise, Combination Settlement with a Specified Dollar Amount of $1,000 per $1,000 principal amount of Notes; provided, however, that the Company may, from time to time, change the Default Settlement Method by sending written notice of the new Default Settlement Method to the Holder.

(t) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, The NASDAQ Global Market, The NASDAQ Capital Market or the NYSE American.

(u) "**Equity Conditions**" means each of the following conditions: (i) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, either (x) all Registration Statements filed and required to be filed pursuant to the Registration Rights Agreement shall be effective and available for the resale of all remaining Registrable Securities including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement and there shall not have been any Grace Periods (as defined in the Registration Rights Agreement) or (y) all Conversion Shares issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, shall be eligible for sale without restriction pursuant to Rule 144 and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, the Common Stock is listed, quoted or designated for quotation on the Principal Market, on any other Eligible Market or on any established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company); (iii) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions may be issued in full without violating Section 5(d)(ii) hereof and, in the case of such Interest Shares, Section 5(d)(i) hereof (and analogous provisions under the Other Notes) and the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, there shall not have occurred either (A) the public announcement of a pending, proposed or intended Fundamental Change which has not been abandoned, terminated or consummated, (B) an Event of Default or (C) an event that with the passage of time or giving of notice would constitute an Event of Default; (v) the Company shall have no knowledge of any fact that would cause (x) the Registration Statements required pursuant to the Registration Rights Agreement not to be effective and available for the resale of all remaining Registrable Securities, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement or (y) any shares of Common Stock issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, not to be eligible for sale without restriction pursuant to Rule 144 promulgated under the Securities Act (subject to solely to any restrictions imposed on the Holder due to the Holder's affiliate status with respect to the Company) and any applicable state securities laws; and (vi) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(v) "**Equity Conditions Failure**" means that on the applicable date of determination, the Equity Conditions have not each been satisfied (or waived in writing by the Holder).

(w) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(x) "**Ex-Dividend Date**" means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date upon which the shares of Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(y) "**First Lien Loan**" means the term loan under the First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, as such shall be amended, amended and restated or otherwise modified from time to time, among JAKKS Pacific, Inc., Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc. and Kids Only, Inc., as borrowers, the lenders party thereto from time to time and Cortland Capital Market Services LLC, as administrative agent.

(z) "**Fundamental Change**" means the occurrence after the Issuance Date of any of the following events:

(1) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) other than the Permitted Holders, the Company or its Subsidiaries or any of their respective employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(2) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries; (any such exchange, offer, consolidation, merger, sale, lease or other transfer transaction or series of transactions being referred to herein as an "**event**"); provided, however, that such event shall not be a Fundamental Change if (x) the holders of more than 50% of the Company's shares of Common Stock immediately prior to such event, own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event or (y) the Permitted Holders own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event;

(3) the Company consummates the liquidation or dissolution of the Company;

(4) a Liquidity Event (as defined in the New Preferred Certificate of Designations (as defined in the Transaction Agreement), as may be amended, amended and restated, supplemented or otherwise modified from time to time); or

(5) on or after November 9, 2020, the Common Stock (or other common stock into which this Note is then convertible) ceases to be listed on at least one U.S. national securities exchange, or ceases to be quoted and traded on an established over-the-counter trading market or system in the U.S., including, without limitation, OTC Markets, Global OTC or OTC Bulletin Board or a similar or comparable over-the-counter market or system;

provided, however, no transaction or event described in clause (2) above shall constitute a Fundamental Change if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or event that would otherwise have constituted a Fundamental Change consists of shares of Publicly Traded Securities, and as a result of the transaction or event, this Note becomes convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 3(c)(ii)(B)).

(aa) "**Group**" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(bb) "**Interest Notice Due Date**" means the tenth (10th) Trading Day prior to the applicable Interest Date.

(cc) "**Interest Share Price**" means, with respect to any Interest Date, the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the applicable Interest Date, by (y) ten (10).

(dd) "**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national securities exchange on the relevant date, then the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" of the Common Stock will be determined by a U.S. nationally recognized independent investment banking firm selected by the Company for this purpose. The Last Reported Sale Price will be determined without reference to after-hours or extended market trading.

(ee) "**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change under clause (1) or (2) of the definition thereof (in the case of any Fundamental Change described in clause (2) of the definition thereof, determined without regard to the proviso in such clause but after giving effect to the exceptions and exclusions to the definition of Fundamental Change that otherwise apply).

(ff) "**Market Disruption Event**" means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock of an aggregate one-half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

(gg) "**Maturity Notice Due Date**" means the tenth (10th) Trading Day prior to the Maturity Date.

(hh) "**Maturity Share Price**" means the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the Maturity Date, by (y) ten (10).

(ii) "**Observation Period**" means, with respect to any conversion, the five (5) consecutive Trading Days immediately preceding the date on which the Holder delivers to the Company the related Conversion Notice or the date on which the Company delivers the Mandatory Conversion Notice to the Holder.

(jj) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(kk) "**Other Oasis Notes**" means the following convertible senior notes issued by the Company to the Holder: (i) the $21.5 million principal amount convertible senior note, issued on November 7, 2017 and amended and restated on August 9, 2019, and (ii) the $8.0 million principal amount convertible senior note, issued on July 26, 2018 and amended and restated on August 9, 2019.

(ll) "**Permitted Holders**" means, without duplication, (a) each of the Consenting Convertible Noteholders (as defined in the Transaction Agreement), (b) the Holder, (c) Affiliates of the Persons referred to in clauses (a) and (b), (d) any Person that has no material assets (other than Capital Stock in the Company, cash and cash equivalents) and of which no Person or "group" (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than Persons referred to in clauses (a) through (c), holds more than 50% of the total voting power of the Capital Stock of such Person, and (e) any "group" the members of which include one or more Permitted Holders (a "**Permitted Holder Group**"), so long as no Person or "group", other than Persons referred to in clauses (a), (b), (c) and (d), beneficially owns more than 50% of the total Capital Stock in the Company held by the Permitted Holder Group; each, a "Permitted Holder".

(mm) "**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

(nn) "**Principal Market**" means The NASDAQ Global Select Market.

(oo) "**Publicly Traded Securities**" means shares of common stock that are traded on a U.S. national securities exchange or that will be so traded when issued or exchanged in connection with a transaction or event described in clause (b) of the definition of Fundamental Change.

(pp) "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(qq) "**Registration Rights Agreement**" means the Amended and Restated Registration Rights Agreement, dated as of the Issuance Date, by and among the Company and the Holders party thereto relating to, among other things, the registration of the resale of the shares of Common Stock issuable upon conversion of this Note and the Other Notes.

(rr) "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(ss) "**Related Fund**" means, with respect to any Person, a fund or account managed by such Person or an Affiliate of such Person.

(tt) "**Required Holders**" means the holders of Notes representing at least a majority of the aggregate Principal amount of the Notes then outstanding and shall include the initial Holder of this Note so long as the initial Holder of this Note or any of its Affiliates holds any Notes.

(uu) "**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day.

(vv) "**SEC**" means the United States Securities and Exchange Commission.

(ww) "**Securities Act**" means the Securities Act of 1933, as amended.

(xx) "**Series A Preferred Stock**" means the Series A Preferred Stock, par value $0.001 per share, of the Company.

(yy) "**Significant Subsidiary**" means, at any date of determination, any Subsidiary that would constitute a "significant subsidiary" within the meaning of Article 1 of Regulation S-X promulgated under the Securities Act as in effect on the Closing Date.

(zz) "**Specified Dollar Amount**" means, with respect to a conversion to which Combination Settlement applies, the maximum cash amount deliverable upon such conversion per $1,000 of Conversion Amount.

(aaa) "**Subsidiary**" means, with respect to any specified Person: (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); or (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(bbb) "**Trading Day**" means a day during which (i) trading in the Common Stock generally occurs on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, in the principal other market on which the Common Stock is then traded, (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market, and (iii) there is no Market Disruption Event. If the Common Stock (or other security for which a Last Reported Sale Price must be determined) is not so listed or traded, "Trading Day" means a "Business Day."

(ccc) "**Transaction Agreement**" means that certain Transaction Agreement, dated as of August 7, 2019, by and among the Company, the Holders party thereto and the other signatories thereto.

(ddd) "**Transaction Agreement Date**" means August 7, 2019.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

JAKKS PACIFIC, INC.

By: /s/*Stephen Berman*
Name: Stephen Berman
Title: CEO

EXHIBIT I

JAKKS PACIFIC, INC.
CONVERSION NOTICE

Reference is made to the Convertible Senior Note (the "**Note**") issued to the undersigned by JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock par value $0.001 per share (the "**Common Stock**") of the Company, as of the date specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Note.

Date of Conversion: _____

Aggregate Conversion Amount to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued, assuming Physical Settlement applies to such conversion : _____

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: _____

Facsimile Number and Electronic Mail: _____

Authorization: _____

By: _____

Title: _____

Dated: _____

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

_____

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock.

JAKKS PACIFIC, INC.

By: _____
Name:
Title:

EXHIBIT II
JAKKS PACIFIC, INC.
FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: JAKKS Pacific, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from JAKKS Pacific, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and accrued and unpaid interest at the cash interest rate thereon to, but excluding, such Fundamental Change Repurchase Date.

The certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)
Social Security or Other Taxpayer Identification Number
principal amount to be repaid (if less than all): $,000
NOTICE: The signature on the Fundamental Change Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 10.7

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this "**Agreement**"), dated as of August 9, 2019, by and between JAKKS Pacific, Inc., a Delaware corporation, with headquarters located at 2951 28th Street, Santa Monica, California 90405 (the "**Company**"), and the investor listed on Schedule I attached hereto (the "**Holder**").

WHEREAS:

A. The Company and the Holder entered into those certain Registration Rights Agreement, dated as of November 7, 2017 and July 25, 2018 (together, the "**Existing Agreements**"), pursuant to which the Company provided registration rights to the Holder as set forth therein.

B. In connection with the Transaction Agreement by and among the parties thereto, which include the parties hereto, of even date herewith (the "**Transaction Agreement**"), the Company has agreed, upon the terms and subject to the conditions of the Transaction Agreement, to (1) issue on the date hereof a Convertible Senior Note to the Holder in the aggregate principal amount of $8,000,000 in consideration for the exchange of certain 4.875% Convertible Senior Notes due 2020 of the Company (the "**2020 Convertible Notes**") beneficially owned by the Holder (the "**New Note**") and (2) amend and restate (x) the Convertible Senior Note issued to the Holder by the Company on November 7, 2017 in the aggregate principal amount of $21,550,000 and (y) the Convertible Senior Note issued to the Holder by the Company on July 26, 2018 in the aggregate principal amount of $8,000,000 (such amended and restated convertible senior notes of the Company, together with the New Note, the "**2019 Amended and Restated Exchange Notes**"), each of which will, among other things, be convertible (upon conversion, interest or otherwise) into the Company's common stock, par value $0.001 per share (the "**Common Stock**") (the shares of Common Stock issuable pursuant to the terms of the 2019 Amended and Restated Exchange Notes, including without limitation, the Interest Shares (as defined below), collectively, the "**2019 Exchange Conversion Shares**").

C. The parties hereto desire to amend and restate the Existing Agreements to reflect certain registration rights with respect to the 2019 Amended and Restated Exchange Notes.

D. The 2019 Amended and Restated Exchange Notes bear interest, which at the option of the Company, subject to certain conditions, may be paid in shares of Common Stock (the "**Interest Shares**").

E. In accordance with the terms of the Transaction Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Holder hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Transaction Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Additional Effective Date**" means the date the Additional Registration Statement is declared effective by the SEC.

(b) "**Additional Effectiveness Deadline**" means the date which is the earlier of (x) (i) in the event that the Additional Registration Statement is not subject to a full review by the SEC, thirty (30) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline or (ii) in the event that the Additional Registration Statement is subject to a full review by the SEC, sixty (60) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline and (y) the fifth (5^{th}) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Additional Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(c) "**Additional Filing Date**" means the date on which the Additional Registration Statement is filed with the SEC.

(d) "**Additional Filing Deadline**" means if Cutback Shares are required to be included in any Additional Registration Statement, the later of (i) the date sixty (60) days after the date substantially all of the Registrable Securities registered under the immediately preceding Registration Statement are sold and (ii) the date six (6) months from the Initial Effective Date or the most recent Additional Effective Date, as applicable.

(e) "**Additional Registrable Securities**" means, (i) any Cutback Shares not previously included on a Registration Statement and (ii) any capital stock of the Company issued or issuable with respect to the 2019 Amended and Restated Exchange Notes, the 2019 Exchange Conversion Shares or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversion and/or redemption of the 2019 Amended and Restated Exchange Notes.

(f) "**Additional Registration Statement**" means a registration statement or registration statements, or a post-effective amendment or post-effective amendments thereto, of the Company filed under the 1933 Act covering the resale of any Additional Registrable Securities.

(g) "**Additional Required Registration Amount**" means any Cutback Shares not previously included on a Registration Statement, subject to adjustment as provided in Sections 2(f) and 2(g), without regard to any limitations on conversion and/or redemption of the 2019 Amended and Restated Exchange Notes.

(h) "**Business Day**" means any day other than Saturday, Sunday or any other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

(i) "**Closing Date**" shall have the meaning ascribed to such term in the Transaction Agreement.

(j) "**Cutback Shares**" means any of the Initial Required Registration Amount or the Additional Required Registration Amount of Registrable Securities not included in all Registration Statements previously declared effective hereunder as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415. Subject to Section 2(g), the number of Cutback Shares shall be allocated pro rata among the Investors with each Investor entitled to elect the portion of its 2019 Exchange Conversion Shares and/or Interest Shares that are to be considered Cutback Shares. For the purpose of determining the Cutback Shares, in order to determine any applicable Required Registration Amount, unless an Investor gives written notice to the Company to the contrary with respect to the allocation of its Cutback Shares, first the Interest Shares shall be excluded on a pro rata basis until all of the Interest Shares have been excluded and second, the 2019 Exchange Conversion Shares shall be excluded on a pro rata basis until all of the 2019 Exchange Conversion Shares have been excluded.

(k) "**Effective Date**" means the Initial Effective Date and the Additional Effective Date, as applicable.

(l) "**Effectiveness Deadline**" means the Initial Effectiveness Deadline and the Additional Effectiveness Deadline, as applicable.

(m) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, Inc., the NYSE American LLC, The NASDAQ Capital Market or The NASDAQ Global Market.

(n) "**Filing Date** " means the Initial Filing Date and the Additional Filing Date, as applicable.

(o) "**Initial Effective Date**" means the date that the Initial Registration Statement has been declared effective by the SEC.

(p) "**Initial Effectiveness Deadline**" means the date which is the earlier of (x) (i) in the event that the Initial Registration Statement is not subject to a full review by the SEC, sixty (60) calendar days after the Closing Date or (ii) in the event that the Initial Registration Statement is subject to a full review by the SEC, ninety (90) calendar days after the Closing Date and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(q) "**Initial Filing Date**" means the date on which the Initial Registration Statement is filed with the SEC.

(r) "**Initial Filing Deadline**" means the date which is thirty (30) calendar days after the Closing Date.

(s) "**Initial Registrable Securities**" means (i) the 2019 Exchange Conversion Shares issued or issuable pursuant to the terms of the 2019 Amended and Restated Exchange Notes and (ii) any capital stock of the Company issued or issuable with respect to the 2019 Amended and Restated Exchange Notes or the 2019 Exchange Conversion Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, in each case without regard to any limitations on conversion and/or redemption of the 2019 Amended and Restated Exchange Notes.

(t) "**Initial Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of the Initial Registrable Securities.

(u) "**Initial Required Registration Amount**" means 100% of the maximum number of 2019 Exchange Conversion Shares issued and issuable pursuant to the 2019 Amended and Restated Exchange Notes as of the Trading Day immediately preceding the applicable date of determination and subject to adjustment as provided in Sections 2(f) and 2(g), without regard to any limitations on conversion and/or redemption of the 2019 Amended and Restated Exchange Notes.

(v) "**Investor**" means the Holder or any transferee or assignee thereof to whom the Holder assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(w) "**Other Registration Rights Agreement**" means that certain Registration Rights Agreement, to be entered into after the Closing Date in accordance with the Transaction Agreement, by and between the Company and certain holders of the 2020 Convertible Notes.

(x) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(y) "**Principal Market**" means The NASDAQ Global Select Market.

(z) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(aa) "**Registrable Securities**" means the Initial Registrable Securities and the Additional Registrable Securities.

(bb) "**Registration Statement**" means the Initial Registration Statement and the Additional Registration Statement, as applicable.

(cc) "**Required Holders**" means the holders of at least a majority of the Registrable Securities and shall include the Holder so long as the Holder or any of its Affiliates holds any Registrable Securities.

(dd) "**Required Registration Amount**" means either the Initial Required Registration Amount or the Additional Required Registration Amount, as applicable.

(ee) "**Rule 415**" means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

(ff) "**SEC**" means the United States Securities and Exchange Commission.

(gg) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

2. Registration.

(a) Initial Mandatory Registration. The Company shall prepare, and, as soon as practicable but in no event later than the Initial Filing Deadline, file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities, subject to the limitations set forth below. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Sections 2(f) and 2(g). The Initial Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B. The Company shall use its reasonable best efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement.

(b) Additional Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on an Additional Registration Statement hereunder, subject to the limitations set forth below. To the extent the staff of the SEC does not permit the Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities, subject to the limitations set forth below, until the Additional Required Registration Amount has been registered with the SEC. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Additional Required Registration Amount determined as of the date such Additional Registration Statement is initially filed with the SEC**,** subject to adjustment as provided in Sections 2(f) and 2(g). Each Additional Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B. The Company shall use its reasonable best efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Additional Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Additional Registration Statement.

(c) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase or decrease in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase or decrease thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor.

(d) Legal Counsel. Subject to Section 5 hereof, the Required Holders shall have the right to select one legal counsel to review and oversee any registration pursuant to this Section 2 ("**Legal Counsel**"), which shall be Schulte Roth & Zabel LLP or such other counsel as thereafter designated by the Required Holders. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company's obligations under this Agreement.

(e) Ineligibility for Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(f) Sufficient Number of Shares Registered. In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a) or Section 2(b) is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(c), the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount, subject to the limitations set forth below, as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its reasonable best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the Registration Statement is less than the Required Registration Amount. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on the conversion and/or redemption of the 2019 Amended and Restated Exchange Notes and such calculation shall assume (i) that the 2019 Amended and Restated Exchange Notes are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the 2019 Amended and Restated Exchange Notes), (ii) the maximum number of Interest Shares under the 2019 Amended and Restated Exchange Notes are issuable at the then prevailing Interest Share Price (as defined in the 2019 Amended and Restated Exchange Notes) and (iii) absent actual conversions and/or redemptions of the 2019 Amended and Restated Exchange Notes, the initial outstanding principal amount of the 2019 Amended and Restated Exchange Notes remains outstanding through the scheduled Maturity Date (as defined in the 2019 Amended and Restated Exchange Notes) and no conversions or redemptions of the 2019 Amended and Restated Exchange Notes occur prior to the scheduled Maturity Date.

(g) The number of Registrable Securities included on a Registration Statement pursuant to this Section 2 shall be subject to the rights of the parties to the Other Registration Rights Agreement to have their “Registrable Securities” (as defined the Other Registration Rights Agreement) (the “**Other Registrable Securities**”) included on such Registration Statement on a pro rata basis, based on the total number of Registrable Securities and Other Registrable Securities to be included. Calculations of Additional Registrable Securities, Additional Required Registration Amount, Cutback Shares, Initial Registrable Securities, Initial Required Registration Amount and Required Registration Amount shall be made taking into account such Other Registrable Securities on a pro rata basis. In no event shall the Company include any securities other than Registrable Securities or Other Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(e) or 2(f), the Company will use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its reasonable best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities covered by such Registration Statement without restriction or limitation pursuant to Rule 144 (as defined below) and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act or (ii) the date on which the Investors shall have sold all of the Registrable Securities actually issued or issuable upon conversion of the 2019 Amended and Restated Exchange Notes or as interest payments (the "**Registration Period**"). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term "reasonable best efforts" shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is promptly sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q, Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least two (2) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) to the extent that Legal Counsel reasonably objects to disclosure regarding an Investor in any Registration Statement or amendment or supplement thereto, not file such Registration Statement or amendment or supplement thereto. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Legal Counsel, without charge, unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system promptly after the same is prepared and filed with the SEC (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Legal Counsel in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus filed with the SEC, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten (10) copies of such supplement or amendment to Legal Counsel and each Investor (or such other number of copies as Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by facsimile or email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the date following the date any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

(g) The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel and each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, at the reasonable request of such Investor, the Company shall furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, the Company shall make available for inspection, unless the Company is legally restricted to do so, by (i) such Investor, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to an Investor, who shall also agree to hold in strict confidence and shall not make any disclosure and who shall indemnify the Company against any loss directly related to such disclosure) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) The Company shall use its reasonable best efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of the Registrable Securities on the Principal Market or (iii) if, despite the Company's reasonable best efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on another Eligible Market for such Registrable Securities and, without limiting the generality of the foregoing, to use its reasonable best efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(k).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

(n) The Company shall use its reasonable best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of a Registration Statement.

(p) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed ten (10) consecutive days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of thirty (30) days and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(s) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market without the prior written consent of such Investor; provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the "Plan of Distribution" section attached hereto as Exhibit B in the Registration Statement. The Company shall be relieved of its registration rights obligations set forth in this Agreement if (i) the SEC requires an Investor to be named as an underwriter in a Registration Statement after the Company's reasonable best efforts to persuade the SEC to the contrary and (ii) such Investor refuses to be so named.

(t) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holder in this Agreement or otherwise conflicts with the provisions hereof; provided, however, that the Other Registration Rights Agreement shall not be deemed to so impair the rights granted to the Holder in this Agreement or otherwise conflict with the provisions hereof solely as a result of conferring registration rights to the parties thereto that are *pari passu*, and shared on a *pro rata* basis, with the registration rights of the Holder as set forth in this Agreement. The Company shall not be deemed to have violated this Section 3(t) to the extent that the Company or any of its Subsidiaries enters into an agreement causing it to trigger an Allowable Grace Period.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(g) or the first sentence of 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f) and for which the Investor has not yet settled.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "**Claims**"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered, or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv), each, a "**Violation**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c), such Investor shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. To the extent that a transfer requires an amendment or a prospectus supplement to a Registration Statement, such transfer shall not be effective until such amendment or prospectus supplement has been filed with the SEC.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders (and, in the case of Section 2(g), the Required Holders (as defined in the Other Registration Rights Agreement)); provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or electronic mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

If to the Company:

JAKKS Pacific, Inc.
2951 28th Street
Santa Monica, California 90405
Telephone: 424-268-9444
Facsimile: 424-268-9655
Attention: Joel M. Bennett
Email: joelb@jakks.net

With a copy (for informational purposes only) to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
Telephone: (213) 687-5070
(213) 687-5200
Facsimile: (213) 621-5070
(213) 621-5200
Attention: Brian J. McCarthy
Van C. Durrer II
Email: brian.mccarthy@skadden.com
van.durrer@skadden.com

If to the Transfer Agent:

Computershare Investor Services, Inc.
8742 Lucent Blvd, Suite 225
Highlands Ranch, CO 80129
Telephone: 303-262-0785
Facsimile: 303-262-0609
Attention: Amanda Lewis
E-mail: amanda.lewis@computershare.com

If to Legal Counsel:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
Attention: Eleazer Klein, Esq.
Email: eleazer.klein@srz.com

If to the Holder, to its address, facsimile number and/or email address set forth on Schedule I attached hereto, with copies to the Holder's representatives as set forth on Schedule I, or to such other address, facsimile number and/or email address to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or email containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Transaction Documents and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(g) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile or electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding 2019 Amended and Restated Exchange Notes then held by the Investors have been converted for Registrable Securities without regard to any limitations on redemption and/or conversion of the 2019 Amended and Restated Exchange Notes.

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Holder and the Company have caused their respective signature page to this Amended and Restated Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

JAKKS PACIFIC, INC.

By: /s/ *Stephen Berman*
Name: Stephen Berman
Title: President, CEO and Secretary

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, the Holder and the Company have caused their respective signature page to this Amended and Restated Registration Rights Agreement to be duly executed as of the date first written above.

HOLDER:

OASIS INVESTMENTS II MASTER FUND LTD.

By: */s/ Phillip Meyer*
Name: Phillip Meyer
Title: Director

[Signature Page to Registration Rights Agreement]

Exhibit 10.8

AMENDMENT NO. 3 TO THE SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDMENT NO. 3 TO THE SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Amendment") is entered into as of August 9, 2019 (the Effective Date"), by and between Stephen G. Berman ("Berman" or "Executive") and JAKKS Pacific, Inc., a Delaware Corporation (the "Company"). The Company and Executive are sometimes referred to herein, each a "Party" and, collectively, the "Parties." This Amendment shall be deemed to take effect immediately prior to the effectiveness of the Transaction Agreements referred to in Section 2(c) below; provided, however, that in the event that the transactions contemplated by the Transaction Agreements are not consummated, this Amendment shall be void *ab initio* and of no force and effect.

WITNESSETH:

WHEREAS, Executive is currently employed by the Company pursuant to that certain Second Amended and Restated Employment Agreement, dated November 11, 2010 (the "2010 Amended and Restated Employment Agreement"), between Executive and the Company, as modified by the October 20, 2011 letter amendment (the "2011 Amendment"), and as amended by Amendment Number One, dated September 12, 2012 (the "2012 Amendment"), and as further amended by Amendment Number Two, dated June 7, 2016 (the "2016 Amendment") (the 2010 Amended and Restated Employment Agreement, together with (and as amended by) the 2011 Amendment, the 2012 Amendment, and the 2016 Amendment, the "Amended Employment Agreement"); and

WHEREAS, the Parties desire to further amend the terms of the Amended Employment Agreement on the terms and subject to the conditions set forth in this Amendment (the Amended Employment Agreement, as amended by this Amendment, referred to as the "Employment Agreement").

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, pursuant to Section 21 of the 2010 Amended and Restated Employment Agreement and subject to the terms and conditions set forth herein, agree as follows:

1. Definitions. All references in the Amended Employment Agreement to "this Agreement" shall be deemed to refer to the Employment Agreement (including as amended by this Amendment). Capitalized terms not defined herein shall have the meanings set forth for such terms in the Amended Employment Agreement.

2. Amendments. The Parties hereby agree that, effective upon the Effective Date (but subject to the consummation of the transactions contemplated by the Transaction Agreements referred to below), the Amended Employment Agreement shall be deemed amended as follows:

(a) Section 3(a) of the Amended Employment Agreement is amended by deleting the current provision in its entirety and inserting, in lieu thereof, the following:

"a. Base Salary. As compensation for his services hereunder, during the Term, the Company shall pay to Executive a base salary ("Base Salary") at the annual rate of $1,700,000.00. The Base Salary shall be paid to Executive in substantially equal installments in accordance with the Company's payroll practices, subject to any required tax withholding."

(b) Section 3(d)(i) through 3(d)(v), inclusive, of the Amended Employment Agreement are amended as follows: All references to "the Annual Performance Bonus for fiscal year 2017 and each fiscal year thereafter during the Term" shall be stricken and replaced with "*the Annual Performance Bonus for fiscal year 2019*."

(c) Sections 3(d)(i) through 3(d)(v), inclusive, of the Amended Employment Agreement are further amended as follows: All references to "each Annual Performance Bonus" and "the Annual Performance Bonus" shall be stricken and replaced with "*any Annual Performance Bonus for fiscal year 2019*."

(d) Sections 3(d)(i) through 3(d)(v), inclusive, of the Amended Employment Agreement are further amended as follows: All references to "the applicable fiscal year" shall be stricken and replaced with "*fiscal year 2019*."

(e) The Amended Employment Agreement is further amended by adding a new Section 3(d)(vi), to provide as follows:

d. 2020 Performance Bonus Opportunity. For the fiscal year commencing on January 1, 2020, Executive shall be eligible to receive a performance-based bonus award in a range between Twenty-Five percent (25%) and Three Hundred percent (300%) of the Base Salary, based upon the level of EBITDA (defined below) achieved by the Company for such fiscal year prior to deduction of bonus expenses and one-time non-recurring costs for initiatives approved by the Board (each an "EBITDA Target Amount"), as determined by the Compensation Committee, and subject to the terms and conditions set forth herein (the "2020 Performance Bonus").

i. For fiscal year 2020, if the Compensation Committee determines that the Company's EBITDA (as defined in the First Lien Term Loan Facility Credit Agreement, dated as of August 9, 2019, by and among Cortland Capital Market Services LLC, the Financial Institutions party thereto, the Company, Disguise, Inc., JAKKS Sales LLC, Maui, Inc., Moose Mountain Marketing, Inc., and Kids Only, Inc.) for fiscal year 2020 prior to deduction of bonus expenses and one-time non-recurring costs for initiatives approved by the Board:

A. is less than $25,000,000.00, no 2020 Performance Bonus shall be paid;

B. equals $25,000,000.00, the 2020 Performance Bonus shall be in an amount equal to Twenty-Five Percent (25%) of the Base Salary for such fiscal year;

C. equals $35,000,000.00, the 2020 Performance Bonus shall be in an amount equal to One Hundred Percent (100%) of the Base Salary for such fiscal year;

D. equals $45,000,000.00, the 2020 Performance Bonus shall be in an amount equal to Two Hundred Percent (200%) of the Base Salary for such fiscal year; OR

E. equals or exceeds $55,000,000.00, the 2020 Performance Bonus shall be in an amount equal to Three Hundred Percent (300%) of the Base Salary for such fiscal year.

To the extent that EBITDA exceeds $25,000,000.00, but falls between two EBITDA Target Amounts set forth in Sections 3(d) i. B. through E. above, the amount of the 2020 Performance Bonus shall be determined by the Compensation Committee through linear interpolation. For the avoidance of doubt, the calculation of any 2020 Performance Bonus shall be based upon only the highest EBITDA Target Amount achieved by the Company for 2020, and shall not be a cumulative amount.

ii. The Company shall pay any 2020 Performance Bonus due Executive hereunder for the fiscal year commencing January 1, 2020 in cash, subject to any required tax withholding, in 2021, not later than twenty-one (21) business days following the date on which the Auditors' final report on the Company's financial statements for fiscal year 2020 is issued and delivered to the Company and in any event not later than April 30, 2021 (the "2020 Performance Bonus Award Date"). Except as otherwise provided herein, Executive must be employed on the 2020 Performance Bonus Award Date to be eligible to receive the 2020 Performance Bonus, or any portion thereof, for such fiscal year.

(f) The Amended Employment Agreement is further amended by deleting Section 3.b.ii. of the Amended Employment Agreement in its entirety and inserting in lieu thereof the following:

(ii) Pursuant to and subject to the terms of the Plan, the Company shall, to the extent shares are available for award under the Plan, issue to Executive on the first business day of 2020 (provided that Executive remains employed by the Company on such date) that number of shares of Restricted Stock that are equal to the lesser of (A) $3,500,000 in value (based on the closing price of a share of the Company's common stock on December 31, 2019), or (B) 1.5% of common shares outstanding of the Company, which shall vest as set forth below in Section 3.b. (iii); provided, that no such award under (A) or (B) above shall be made to Executive (and no cash substitute shall be provided to Executive) to the extent shares are not available for grant under the Plan as of such date; and, provided, further, that the Company shall not be obligated to amend the Plan and/or seek shareholder approval of any amendment to increase the amount of available shares under the Plan.

(iii) Granted shares will vest in four equal installments on each anniversary of grant.

(g) The Amended Employment Agreement is further amended by adding a new Section 37, to provide as follows:

37. For all purposes under this Employment Agreement and the 2002 Stock Award and Incentive Plan (together with all Restricted Stock or other Awards granted to Executive thereunder, and any equity or equity-based compensation plan, program or arrangement or other compensation plan, program or arrangement hereafter adopted, the "Plan Documents"), Executive hereby acknowledges and agrees that, for good and valuable consideration, receipt of which Executive hereby acknowledges and agrees, none of the Specified Transactions shall constitute, or be deemed to constitute, or cause a "Change of Control," Liquidity Event, or similar transaction under this Employment Agreement or the Plan Documents or entitle Executive to any payments or benefits ("Change of Control Benefits") or the enhancement or acceleration of any Change of Control Benefits, notwithstanding anything to the contrary contained in this Employment Agreement or the 2002 Stock Award and Incentive Plan. As used herein, "Specified Transactions" means any of the following: (i) the transactions contemplated by the Transaction Agreement dated as of August 7, 2019 as such agreement exists on the date hereof (the "Transaction Agreement") between the Company, certain related entities, the "Consenting Noteholders" (as defined therein) and the other parties thereto, including the issuance of Common Stock, Preferred Stock and Amended and Restated Oasis Notes (each as defined in the Transaction Agreement) pursuant to such Transaction Agreement, and (ii) any future transaction(s) approved by the Company's Board to the extent involving solely the issuance by the Company of Common Stock to holders of the Company's Preferred Stock in exchange for tenders of such Preferred Stock issued pursuant to the Transaction Agreement or to the holders of the Amended and Restated Oasis Notes or to the Company's lenders under the First Lien Credit Agreement (as defined in the Transaction Agreement) in exchange for tenders to the Company of the Amended and Restated Oasis Notes or loans issued under the First Lien Credit Agreement, as applicable.

(h) Section 14(a) of the Amended Employment Agreement is amended by deleting in its entirety the additional trigger for a "Good Reason Event" added by the 2012 Amendment and inserting in lieu thereof, the following:

(iii) there is any change in the membership of the Company's Board of Directors such that following such change, a majority of the directors are not Continuing Directors. As used herein, "Continuing Directors" means (A) any person who is a member of the Company's Board of Directors as of the Effective Date, (B) any person who is subsequently nominated for, or elected to, the Board of Directors with the approval of a majority of the Continuing Directors then in office, (C) any individual named on the "Preapproved List" (as defined in the Amended and Restated Charter of the Nominating Committee) or (D) any individual elected by holders of the Company's Series A Senior Preferred Stock to serve as a "Series A Preferred Stock Director" (as defined in the Series A Preferred Stock Certificate of Designations filed with the Secretary of State of the State of Delaware)

(i) The Amended Employment Agreement is further amended by adding a new Section 38, to provide as follows:

38. Executive acknowledges and agrees that, as a condition of receiving the payments and benefits to be provided to him if Executive's employment is terminated by Executive pursuant to Section 14.a. or 14.b. of this Employment Agreement as a result of the occurrence of a Good Reason Event or by the Company other than as a result of the occurrence of a For Cause Event, including those payments and benefits set forth in Section 15.c.iv.and Section 15.c.v., or Section 15.d.iv (as applicable), each of the other benefits set forth in Section 17 of this Employment Agreement, and, if applicable, the "Special Sale Transaction Bonus" set forth in Section 39 of this Employment Agreement, Executive must execute and deliver to the Company a Separation Agreement and General Release in substantially the form attached hereto as Exhibit A (the "Release"), in accordance with the time limits set forth therein, and not exercise any right to revoke such Release.

(j) The Amended Employment Agreement is further amended by deleting Section 15.e. in its entirety and inserting in lieu thereof, the following:

e. Any amount payable to Executive upon termination of his employment pursuant to Section 15.a., Section 15.b., Sections 15.c.i., 15.c.ii., and 15.c.iii., or Sections 15.d.i., 15.d.ii. and 15.d.iii., as applicable, shall be paid promptly, and in any event within thirty (30) days after the Termination Date, or such earlier date as required by applicable law. Any amount payable to Executive pursuant to Section 15.c.iv., Section 15.c.v., or Section 15.d.iv, as applicable, of this Employment Agreement shall be payable on the thirtieth (30th) day after the Termination Date, provided that the Release has become effective and irrevocable on or prior to such date. If Executive shall die prior to Executive's receipt of all payments required under this Employment Agreement, the Company shall pay Executive's designated beneficiary or, if there is no designated beneficiary, his estate, all such amounts that would have otherwise been payable to Executive under this Agreement as of the date of his death, provided that any such beneficiary or representative of Executive's estate must execute and deliver to the Company, in accordance with the time limits set forth therein, an effective and irrevocable general release that waives and releases the Company, its affiliates, and their respective officers, directors, employees and agents, from any and all claims Executive may have had against them through and including the date of the release, in order to receive any payment or benefit that is subject to Section 38 of this Agreement.

(k) The Amended Employment Agreement is further amended by deleting the definition of "Voting Securities" in Section 16.a.vi in its entirety and inserting in lieu thereof the following:

"Voting Securities" includes Common Stock and any other securities of the Company that ordinarily entitle the holders thereof to vote, together with the holders of Common Stock or as a separate class, with respect to matters submitted to a vote of the holders of Common Stock, but the following shall not be deemed Voting Securities: (i) the Series A Preferred Stock of the Company, (ii) any convertible notes of the Company that have not been converted into Common Stock and (iii) any securities of the Company as to which the consent of the holders thereof is required by applicable law or the terms of such securities only with respect to certain specified transactions or other matters, or the holders of which are entitled to vote only upon the occurrence of certain specified events (such as default in the payment of a mandatory dividend on preferred stock or a scheduled installment of principal or interest of any debt security).

(l) The Amended Employment Agreement is further amended by inserting the following definition of "Permitted Holders" as a new Section 16.a.x:

"Permitted Holders" means, without duplication, (a) each of the beneficial owners of the Company's Series A Preferred Stock as of August 9, 2019, (b) Oasis Investments II Master Fund Ltd., (c) affiliates of the beneficial owners referred to in clauses (a) and (b), (d) any entity that has no material assets (other than Voting Securities of the Company, cash and cash equivalents) and of which no person, entity or "group", other than the persons and entities referred to in clauses (a) and (b), holds more than 30% of the total voting power of such entity, and (e) any "group" the members of which include one or more Permitted Holders (a "Permitted Holder Group"), so long as no person, entity or "group", other than any persons, entities or "groups" referred to in clauses (a), (b) and (c), beneficially owns more than 30% of the total Voting Securities of the Company held by the Permitted Holder Group.

(m) The Amended Employment Agreement is further amended by deleting clause B of the definition of "Change of Control" in Section 16.b and inserting the following in lieu thereof:

B. upon an acquisition of Voting Securities or Rights by a Non- Affiliated Person or any change in the number or voting power of outstanding Voting Securities, either (i) in the case of a Non-Affiliated Person that is not a Permitted Holder, such Non-Affiliated Person beneficially owns Voting Securities or Rights entitling such person to cast a number of votes (determined in accordance with Section 16(g)) greater than 30% of the sum of (A) the number of votes that may be cast by all other holders of outstanding Voting Securities and (B) the number of votes that may be cast by such Non-Affiliated Person (determined in accordance with Section 16(g)) or (ii) in the case of a Non-Affiliated Person that is a Permitted Holder, such Non-Affiliated Person beneficially owns Voting Securities or Rights entitling such person to cast a number of votes (determined in accordance with Section 16(g)) greater than 50% of the sum of (A) the number of votes that may be cast by all other holders of outstanding Voting Securities and (B) the number of votes that may be cast by such Non-Affiliated Person (determined in accordance with Section 16(g)); or

(n) The Amended Employment Agreement is further amended by deleting clause C of the definition of "Change of Control" in Section 16.b and inserting the following in lieu thereof:

C. upon any change in the membership of the Company's Board of Directors, a majority of the directors are persons who are not Continuing Directors (as defined in Section 14(a) of this Agreement).

(o) The Amended Employment Agreement is further amended by adding a new Section 39, to provide as follows:

39. Special Sale Transaction Bonus.

If the Company enters into and consummates a Sale Transaction (as defined below) on or before February [15], 2020, Executive shall be eligible to receive, a special sale transaction bonus in an amount equal to One Million Dollars ($1,000,000.00)(less applicable withholdings and deductions) (the "Special Sale Transaction Bonus"), subject to the terms and conditions set forth herein. To be eligible to receive the Special Sale Transaction Bonus Executive must remain continuously employed by the Company through the date on which such Sale Transaction is consummated (the "Sale Transaction Date"); provided, however, if Executive's employment is terminated by Executive pursuant to Section 14(a) as a result of a Good Reason Event or by the Company other than as a result of the occurrence of a For Cause Event, on or before the Sale Transaction Date, and Executive executes and delivers to the Company in accordance with the time limits set forth therein, the Release, the Company shall pay Executive the Special Sale Transaction Bonus, subject to the terms and conditions set forth herein. If before the Sale Transaction Date Executive's employment is terminated by Executive other than as a result of the occurrence of a Good Reason Event or by the Company for Cause, Executive shall not be entitled to any Special Sale Transaction Bonus. The Special Sale Transaction Bonus, if any, will be paid to Executive in cash within forty-five (45) days after the closing of the Sale Transaction, subject to his execution and delivery of the Release, to the extent applicable. If a Sale Transaction is not consummated prior to February [15], 2020, Executive shall not be entitled to any Special Sale Transaction Bonus. Executive acknowledges and agrees that the Special Sale Transaction Bonus is the only bonus he is eligible to receive in connection with a Sale Transaction. The Company acknowledges that the Special Sale Transaction Bonus shall be in addition to, and not in lieu of, any severance or other similar benefits to which Executive may be entitled under Sections 15.d. or 17 of this Employment Agreement.

"Sale Transaction" shall mean the sale, lease, transfer, issuance or other disposition, in one transaction or a series of related transactions, of (i) all or substantially all of the consolidated assets of the Company and its subsidiaries (including by or through the issuance, sale, contribution, transfer or other disposition (including by way of reorganization, merger, share or unit exchange, consolidation or other business combination) of a majority of the capital stock or other equity interests of any direct and/or indirect subsidiary or subsidiaries of the Company if substantially all of the consolidated assets of the Company and its subsidiaries are held by such subsidiary or subsidiaries) or (ii) equity of the Company representing at least a majority of the fully diluted common stock of the Company (whether directly or indirectly or by way of any merger, share or unit exchange, recapitalization, sale or contribution of equity, tender offer, reclassification, consolidation or other business combination transaction or purchase of beneficial ownership), to (in either case of clause (i) or clause (ii)) any person or "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended, or any successor provision) of persons; provided, however, that concurrently with such Sale Transaction the holders of the Company's Series A Preferred Stock receive payment of the full amount of the Liquidation Preference of the Series A Preferred Stock and all outstanding secured indebtedness of the Company is paid in full.

(p) The Amended Employment Agreement is further amended by adding Exhibit A to this Amendment as new Exhibit A to the Amended Employment Agreement.

3. Ratification; Effect of Amendment. Except as expressly provided herein, this Amendment shall not, by implication or otherwise, alter, modify, amend or in any way affect any of the obligations, covenants or rights contained in the Amended Employment Agreement, all of which are ratified and confirmed in all respects by the Parties and shall continue in full force and effect. Each reference to the Employment Agreement or Amended Employment Agreement hereafter made in any document, agreement, instrument, notice or communication shall mean and be a reference to the Employment Agreement, as amended and modified hereby.

4. Reimbursement of Legal Fees. The Company shall reimburse Executive for up to $20,000.00 of reasonable legal fees and disbursements incurred by him to his counsel Choate, Hall & Stewart LLP in the negotiation of this Amendment, promptly following presentation to the Company of documentation demonstrating such fees and disbursements.

5. Miscellaneous.

(a) This Amendment shall be governed and construed as to its validity, interpretation and effect by the laws of the State of California, without reference to its conflicts of laws provisions.

(b) The Section captions herein are for convenience of reference only, do not constitute part of this Amendment and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(c) Each party hereto acknowledges that it has had an opportunity to consult with counsel and has participated in the preparation of this Amendment. No party hereto is entitled to any presumption with respect to the interpretation of any provision hereof or the resolution of any alleged ambiguity herein based on any claim that the other party hereto drafted or controlled the drafting of this Amendment.

(d) This Amendment and the documents referenced herein, constitute the entire agreement among the Parties with respect to this amendment of the Amended Employment Agreement and supersede all prior agreements, negotiations, drafts, and understandings among the Parties with respect to such subject matter. This Amendment can only be changed or modified pursuant to a written instrument referring explicitly hereto, and duly executed by each of the Parties.

(e) This Amendment may be executed and delivered (by facsimile or PDF signature) in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the day and year first written above.

THE COMPANY:

JAKKS PACIFIC, INC.

By: /s/ *Brent Novak*
Name: Brent Novak
Title: Chief Financial Officer

EXECUTIVE:

/s/*Stephen G. Berman*
Stephen G. Berman